

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(1) FARM BUSINESS TENANCIES UNDER THE AGRICULTURAL TENANCIES ACT 1995/(i) Nature of Farm Business Tenancies/301. Tenancies beginning on or after 1 September 1995.

## **AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)**

### **1. TENANCIES OF AGRICULTURAL LAND**

#### **(1) FARM BUSINESS TENANCIES UNDER THE**

##### **(i) Nature of Farm Business Tenancies**

##### **301. Tenancies beginning on or after 1 September 1995.**

The Agricultural Tenancies Act 1995 applies in relation to any tenancy<sup>1</sup> beginning on or after 1 September 1995<sup>2</sup> which fulfils the conditions for farm business tenancies<sup>3</sup>, except any tenancy of an agricultural holding<sup>4</sup> which:

- 1 (1) is granted by a written contract of tenancy<sup>5</sup> entered into before 1 September 1995<sup>6</sup> and indicating (in whatever terms) that the Agricultural Holdings Act 1986<sup>7</sup> is to apply in relation to the tenancy<sup>8</sup>;
- 2 (2) is obtained by virtue of a direction of an agricultural land tribunal<sup>9</sup> under the statutory provisions relating to succession to agricultural tenancies on death or retirement<sup>10</sup>;
- 3 (3) is granted<sup>11</sup> in specified circumstances<sup>12</sup> where a successful application for succession on death has been made<sup>13</sup>;
- 4 (4) is granted on an agreed succession<sup>14</sup> by a written contract of tenancy indicating (in whatever terms) that the provisions relating to the death or retirement of an agricultural tenant<sup>15</sup> are to apply in relation to the tenancy<sup>16</sup>;
- 5 (5) is created by the acceptance of a tenant, in accordance with the provisions as to compensation known as the 'Evesham custom'<sup>17</sup>, on the terms and conditions of the previous tenancy<sup>18</sup>;
- 6 (6) is granted to a person who, immediately before the grant of the tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding<sup>19</sup>, under a tenancy in relation to which the Agricultural Holdings Act 1986 applied and is so granted because an agreement between the parties (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy<sup>20</sup> (there being a limited exception to this category<sup>21</sup>); or
- 7 (7) is granted to a person who, immediately before the grant of the tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a tenancy in relation to which the Agricultural Holdings Act 1986 applied, and is so granted by a written contract of tenancy indicating (in whatever terms) that that Act is to apply in relation to the tenancy<sup>22</sup> (there being a limited exception to this category<sup>23</sup>).

The Agricultural Holdings Act 1986 continues to apply to such excluded tenancies and to tenancies granted before 1 September 1995<sup>24</sup>.

1 In the Agricultural Tenancies Act 1995 'tenancy' means any tenancy other than a tenancy at will, and includes a sub-tenancy and an agreement for a tenancy or sub-tenancy, and 'tenant' includes a sub-tenant and any person deriving title from the original tenant or sub-tenant: s 38(1). The designation of 'tenant' continues to apply until the conclusion of any proceedings taken under the Agricultural Tenancies Act 1995 in respect of compensation: s 38(5).

2 Ie the date on which the Agricultural Tenancies Act 1995 was brought into force: see s 41(2). For these purposes a tenancy begins on the day on which, under the terms of the tenancy, the tenant is entitled to possession under that tenancy; and references to the 'beginning' of the tenancy are references to that day: s 38(4).

3 See the Agricultural Tenancies Act 1995 s 1; and PARA 302.

4 As to the meaning of 'agricultural holding' for these purposes see the Agricultural Holdings Act 1986 s 1(1); and PARA 323 (definition applied by the Agricultural Tenancies Act 1995 s 4(3)(a) (s 4(1), (2)(a), (e), (f), (3)(a) amended, s 4(2)(b) substituted, s 4(1)(g), (2)(c) (2A)-(2C), (3)(c) added, by SI 2006/2805)).

5 As to the meaning of 'contract of tenancy' for these purposes see the Agricultural Holdings Act 1986 s 1(5); and PARA 325 (definition applied by the Agricultural Tenancies Act 1995 s 4(3)(a)).

6 A tenancy granted pursuant to a contract is taken for the purposes of the Agricultural Tenancies Act 1995 to have been granted when the contract was entered into: s 38(3).

7 As to agricultural tenancies under the Agricultural Holdings Act 1986 see PARA 321 et seq.

8 Agricultural Tenancies Act 1995 s 4(1)(a) (as amended: see note 4).

9 As to agricultural land tribunals see PARAS 670-673.

10 Agricultural Tenancies Act 1995 s 4(1)(b). For the statutory provisions relating to succession to agricultural tenancies on death or retirement see the Agricultural Holdings Act 1986 ss 39, 53; and PARAS 405, 410.

11 Ie following a direction under the Agricultural Holdings Act 1986 s 39 (see PARA 405).

12 Ie circumstances falling within the Agricultural Holdings Act 1986 s 45(6) (see PARA 407).

13 Agricultural Tenancies Act 1995 s 4(1)(c).

14 For this purpose a tenancy (the 'current tenancy') is granted on an agreed succession if, and only if:

- 1 (1) the previous tenancy of the holding or a related holding was a tenancy in relation to which the Agricultural Holdings Act 1986 Pt IV (ss 34-59) (see PARAS 400-413) applied (Agricultural Tenancies Act 1995 s 4(2)(a) (as amended: see note 4)); and
- 2 (2) the current tenancy is granted to a person (alone or jointly with other persons) who, if the tenant under that previous tenancy (the 'previous tenant') had died immediately before the grant, would have been his close relative (Agricultural Tenancies Act 1995 s 4(2)(b) (as so substituted)); and
- 3 (3) either the current tenancy is granted to a person (alone or jointly with other persons) who was or had become the sole or sole remaining applicant for a direction of an agricultural land tribunal for a tenancy (s 4(2)(c), (2A)(a) (as so added)) and the current tenancy is granted as a result of an agreement between the landlord and the previous tenant (s 4(2A)(b)(i) (as so added)) and is granted, and begins, before the date of the giving of any retirement notice by the previous tenant, or if no retirement notice is given, before the date of death of the previous tenant (s 4(2A)(b)(ii) (as so added)).

As to the meanings of 'close relative', 'related holding' and 'retirement notice' for these purposes see the Agricultural Holdings Act 1986 ss 35(2), 49(3); and PARAS 401 note 5, 402 note 2 (definitions applied by the Agricultural Tenancies Act 1995 s 4(3)(b), (c) (s 4(3)(c) as added: see note 4)).

15 Ie the Agricultural Holdings Act 1986 Pt IV (ss 34-59) (see PARAS 400-413).

- 16 Agricultural Tenancies Act 1995 s 4(1)(d).
- 17 As to the Evesham custom see the Agricultural Holdings Act 1986 s 80(3)-(5); and PARA 466.
- 18 Agricultural Tenancies Act 1995 s 4(1)(e) (as amended: see note 4).
- 19 The references in the Agricultural Tenancies Act 1995 s 4(1)(g), (2B) (see the text and notes 21-22) to a 'substantial part of the land comprised in the holding' mean a substantial part determined by reference to either area or value: s 4(2C) (as added: see note 4).
- 20 Agricultural Tenancies Act 1995 s 4(1)(f) (as amended: see note 4).
- 21 The Agricultural Holdings Act 1986 will not apply by virtue of the Agricultural Tenancies Act 1995 s 4(1)(f) or s 4(1)(g) (see the text and notes 20, 22) in relation to the tenancy of an agricultural holding (the 'current holding') where:
- 4 (1) the whole or a substantial part of the land comprised in the current holding (see note 19) was comprised in an agricultural holding (the 'previous holding') which was subject to a tenancy granted after 19 October 2006 in relation to which the Agricultural Holdings Act 1986 applied by virtue of the Agricultural Tenancies Act 1995 s 4(1)(f) or s 4(1)(g) (s 4(2B)(a) (as so added));
  - 5 (2) the whole or a substantial part of the land comprised in the previous holding was comprised in an agricultural holding (the 'original holding') which was at 19 October 2006 subject to a tenancy in relation to which the Agricultural Holdings Act 1986 applied (Agricultural Tenancies Act 1995 s 4(2B)(b) (as so added)); and
  - 6 (3) the land comprised in the original holding does not, on the date of the grant of the tenancy of the current holding, comprise the whole or a substantial part of the land comprised in the current holding (s 4(2B)(c) (as so added)).
- 22 Agricultural Tenancies Act 1995 s 4(1)(g) (as added: see note 4).
- 23 See note 21.
- 24 See the Agricultural Tenancies Act 1995 ss 2, 4(1); and PARA 321 et seq.

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### **302. Conditions for farm business tenancies.**

A tenancy<sup>1</sup> is a farm business tenancy<sup>2</sup> if:

- 8 (1) it meets the business conditions<sup>3</sup>;
- 9 (2) it meets either the agriculture condition or the notice conditions<sup>4</sup>;
- 10 (3) it did not begin before 1 September 1995<sup>5</sup>; and
- 11 (4) it is not a tenancy of an agricultural holding<sup>6</sup> beginning on or after that date with respect to which the Agricultural Holdings Act 1986 applies<sup>7</sup>.

The 'business conditions' are that all or part of the land comprised in the tenancy is farmed<sup>8</sup> for the purposes of a trade or business<sup>9</sup> and that, since the beginning of the tenancy<sup>10</sup>, all or part of the land so comprised has been so farmed<sup>11</sup>. The 'agriculture condition' is that the character of the tenancy is<sup>12</sup> primarily or wholly agricultural<sup>13</sup>. The 'notice conditions' are that the landlord<sup>14</sup> and the tenant each gave the other a written notice<sup>15</sup> to the effect that the land in question is intended to be held under a farm business tenancy<sup>16</sup> and that the character of the tenancy<sup>17</sup> at the beginning was primarily or wholly agricultural<sup>18</sup>. In the case of successive tenancies there is

a limited extension allowing the subsequent tenancy to take the benefit of the notice conditions previously having been met<sup>19</sup>.

Any use of land in breach of the terms of the tenancy, any commercial activities carried on in breach of those terms, and any cessation of such activities in breach of those terms, must be disregarded in determining whether at any time the tenancy meets the business conditions or the agriculture condition, unless the landlord or his predecessor in title has consented to the breach or the landlord has acquiesced in the breach<sup>20</sup>.

A farm business tenancy cannot be a secure tenancy<sup>21</sup> or an assured tenancy<sup>22</sup>.

1 As to the meaning of 'tenancy' and 'tenant' see PARA 301 note 1.

2 le for the purposes of the Agricultural Tenancies Act 1995.

3 Agricultural Tenancies Act 1995 s 1(1)(a).

4 Agricultural Tenancies Act 1995 s 1(1)(a).

5 Agricultural Tenancies Act 1995 ss 1(1)(b), 2(1)(a). 1 September 1995 is the date on which the Agricultural Tenancies Act 1995 was brought into force: see s 41(2).

6 As to the meaning of 'agricultural holding' for these purposes see the Agricultural Holdings Act 1986 s 1(1); and PARA 323 (definition applied by the Agricultural Tenancies Act 1995 s 2(2)).

7 Agricultural Tenancies Act 1995 s 2(1)(b). As to the circumstances in which the Agricultural Holdings Act 1986 will continue to apply to a tenancy after 1 September 1995 see s 4; and PARAS 301, 321.

8 As to references to the 'farming' of land see PARA 324.

9 Agricultural Tenancies Act 1995 s 1(2)(a).

10 As to when a tenancy begins for these purposes see PARA 301 note 2. If in any proceedings any question arises as to whether a tenancy was a farm business tenancy at any time and it is proved that all or part of the land comprised in the tenancy was farmed for the purposes of a trade or business at that time, it is presumed, unless the contrary is proved, that all or part of the land so comprised has been so farmed since the beginning of the tenancy: Agricultural Tenancies Act 1995 s 1(7).

11 Agricultural Tenancies Act 1995 s 1(2)(b).

12 le having regard to the terms of the tenancy, the use of the land comprised in the tenancy, the nature of any commercial activities carried on on that land and any other relevant circumstances: Agricultural Tenancies Act 1995 s 1(3).

13 Agricultural Tenancies Act 1995 s 1(3).

14 'Landlord' includes any person from time to time deriving title from the original landlord: Agricultural Tenancies Act 1995 s 38(1). The designation of 'landlord' continues to apply until the conclusion of any proceedings taken under the Agricultural Tenancies Act 1995 in respect of compensation: s 38(5).

15 The notice must be given on or before whichever is the earlier of the day on which the parties enter into any instrument creating the tenancy, other than an agreement to enter into a tenancy on a future date and the beginning of the tenancy (Agricultural Tenancies Act 1995 s 1(4), (5)). The notice must not be included in any instrument creating the tenancy: s 1(6).

Any notice or other document required or authorised to be given under the Agricultural Tenancies Act 1995 is duly given to a person if it is delivered to him, it is left at his proper address or it is given to him in a manner authorised by a written agreement made, at any time before the giving of the notice, between him and the person giving the notice; and a notice or other document is not duly given to a person if its text is transmitted to him by facsimile or other electronic means otherwise than by virtue of this provision: s 36(1)-(3). Where a notice or other document is to be given to a body corporate, the notice or document is duly given if it is given to the secretary or clerk of that body: s 36(4). When a notice or other document is to be given to a landlord under a farm business tenancy and either an agent or servant of his is responsible for the control of the management of the holding, or such a document is to be given to a tenant under a farm business tenancy and an agent or servant of his is responsible for the carrying on of a business on the holding, the notice or document is duly given if it is given to that agent or servant: s 36(5).

For these purposes the proper address of any person to whom a notice or other document is to be given is the registered or principal office of a body corporate (in the case of the secretary or clerk of a body corporate) and the last known address of the person in question (in any other case): s 36(6). Unless or until the tenant under a farm business tenancy has received notice that the person who before that time was entitled to receive the rents and profits of the holding (the 'original landlord') has ceased to be so entitled, and notice of the name and address of the person who has become entitled to receive the rents and profits, any notice or other document given to the original landlord by the tenant is deemed for these purposes to have been given to the landlord under the tenancy: s 36(7).

'Holding', in relation to a farm business tenancy, means the aggregate of the land comprised in the tenancy: s 38(1).

16 Agricultural Tenancies Act 1995 s 1(4)(a). The notice must identify (by name or otherwise) the land to be comprised in the tenancy or proposed tenancy (s 1(4)(a)(i)) and must contain a statement to the effect that the person giving the notice intends that the tenancy or proposed tenancy is to be, and remain, a farm business tenancy (s 1(4)(a)(ii)). There is no prescribed form.

17 In having regard to the terms of the tenancy and any other relevant circumstances: Agricultural Tenancies Act 1995 s 1(4)(b).

18 Agricultural Tenancies Act 1995 s 1(4)(b).

19 Where:

- 7 (1) a tenancy (the 'new tenancy') is granted to a person who, immediately before the grant, was the tenant under a farm business tenancy (the 'old tenancy') which met the notice conditions (Agricultural Tenancies Act 1995 s 3(1)(a));
- 8 (2) either the land comprised in the new tenancy is the same as the land comprised in the old tenancy, apart from any changes in area which are small in relation to the size of the holding and do not affect the character of the holding or the old tenancy and the new tenancy are both fixed term tenancies, but the term date (ie, in relation to a fixed term tenancy, the date fixed for the expiry of the term) under the new tenancy is earlier than the term date under the old tenancy (s 3(1)(b), (2), (3), (5)); and
- 9 (3) except as respects the matters mentioned under head (2) above and matters consequential on them, the terms of the new tenancy are substantially the same as the terms of the old tenancy (s 3(1)(c)),

the new tenancy is taken for these purposes to meet the notice conditions specified in s 1(4) (s 3(4)). 'Fixed term tenancy' means any tenancy other than a periodic tenancy: s 38(1).

20 Agricultural Tenancies Act 1995 s 1(8). The landlord under a farm business tenancy, whatever his estate or interest in the holding, may, for the purposes of the Agricultural Tenancies Act 1995, give any consent, make any agreement or do or have done to him any other act which he might give, make, do or have done to him if he were owner in fee simple or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold: s 32.

21 See the Housing Act 1985 Sch 1 para 8; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1314.

22 See the Housing Act 1988 Sch 1 para 7; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1032.

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### 303. Crown land.

The Agricultural Tenancies Act 1995 applies<sup>1</sup> in relation to land in which there subsists, or has at any material time subsisted, a Crown interest<sup>2</sup> as it applies in relation to land in which no such interest subsists or has ever subsisted<sup>3</sup>. For these purposes<sup>4</sup>:

- 12 (1) where an interest belongs to Her Majesty in right of the Crown and forms part of the Crown Estate, the Crown Estate Commissioners are treated as the owner of the interest<sup>5</sup>;
- 13 (2) where an interest belongs to Her Majesty in right of the Crown and does not form part of the Crown Estate, the government department having the management of the land or, if there is no such department, such person as Her Majesty may appoint in writing under the Royal Sign Manual is treated as the owner of the interest<sup>6</sup>;
- 14 (3) where an interest belongs to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy is treated as the owner of the interest<sup>7</sup>;
- 15 (4) where an interest belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department is treated as the owner of the interest<sup>8</sup>; and
- 16 (5) where an interest belongs to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints is treated as the owner of the interest<sup>9</sup>.

If any question arises as to who is to be treated as the owner of a Crown interest, that question must be referred to the Treasury, whose decision is final<sup>10</sup>.

1 As to the tenancies to which the Agricultural Tenancies Act 1995 applies see PARA 301.

2 I.e. an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall, or to a government department, or which is held in trust for Her Majesty for the purposes of a government department: Agricultural Tenancies Act 1995 s 37(4).

3 Agricultural Tenancies Act 1995 s 37(1).

4 I.e. for the purposes of the Agricultural Tenancies Act 1995.

5 Agricultural Tenancies Act 1995 s 37(2)(a). As to the Crown Estate and the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 278-299.

6 Agricultural Tenancies Act 1995 s 37(2)(b).

7 Agricultural Tenancies Act 1995 s 37(2)(c). As to the Duchy of Lancaster see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-317.

8 Agricultural Tenancies Act 1995 s 37(2)(d).

9 Agricultural Tenancies Act 1995 s 37(2)(e). As to the Duchy of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 318-353. If the interest is that of landlord, the appointed person may do any act or thing which a landlord is authorised or required to do under the Agricultural Tenancies Act 1995: s 37(2)(e). As to the meaning of 'landlord' see PARA 302 note 14. For the power of limited owners to give consents, make agreements and enter into transactions see s 32; and PARA 302 note 20.

10 Agricultural Tenancies Act 1995 s 37(3).

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## **(ii) Termination of Tenancies**

### **304. Termination of the tenancy.**

Notwithstanding any agreement to the contrary<sup>1</sup>, a farm business tenancy<sup>2</sup> for a term of more than two years will, instead of terminating on the term date<sup>3</sup>, continue (as from that date) as a tenancy<sup>4</sup> from year to year, but otherwise on the terms of the original tenancy so far as applicable, unless at least 12 months before the term date a written notice has been given<sup>5</sup> by either party to the other of his intention to terminate the tenancy<sup>6</sup>.

Notwithstanding any provision to the contrary in the tenancy<sup>7</sup>, where a farm business tenancy is a tenancy from year to year a notice to quit the holding<sup>8</sup> or part of the holding will be invalid unless:

- 17 (1) it is in writing<sup>9</sup>;
- 18 (2) it is to take effect at the end of a year of the tenancy<sup>10</sup>; and
- 19 (3) it is given at least 12 months before the date on which it is to take effect<sup>11</sup>.

Notwithstanding any provision to the contrary in the tenancy<sup>12</sup>, where a farm business tenancy is a tenancy for a term of more than two years, any notice to quit the holding or part of the holding given in pursuance of any provision of the tenancy will be invalid unless it is in writing and is given at least 12 months before the date on which it is to take effect<sup>13</sup>.

1 Agricultural Tenancies Act 1995 s 5(4).

2 As to the meaning of 'farm business tenancy' see PARA 302.

3 For these purposes 'term date', in relation to a fixed term tenancy, means the date fixed for the expiry of the term: Agricultural Tenancies Act 1995 s 5(2). 'Fixed term tenancy' means any tenancy other than a periodic tenancy: s 38(1).

4 As to the meaning of 'tenancy' see PARA 301 note 1.

5 As to the giving of notices see PARA 302 note 15.

6 Agricultural Tenancies Act 1995 s 5(1) (ss 5(1), 6(1)(c), 7(1) amended by SI 2006/2805). For the purposes of the Law of Property Act 1925 s 140 (apportionment of conditions on severance of reversion: see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555), a notice under Agricultural Tenancies Act 1995 s 5(1) is taken to be a notice to quit: s 5(3). There is no prescribed form of notice.

7 The Agricultural Tenancies Act 1995 s 6(1) does not, however, apply in relation to a counter-notice given by the tenant by virtue of the Law of Property Act 1925 s 140(2) (apportionment of conditions on severance of reversion: see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555): Agricultural Tenancies Act 1995 s 6(3).

8 As to the meaning of 'holding' see PARA 302 note 15.

9 Agricultural Tenancies Act 1995 s 6(1)(a). There is no prescribed form of notice.

10 Agricultural Tenancies Act 1995 s 6(1)(b).

11 Agricultural Tenancies Act 1995 s 6(1)(c) (as amended: see note 6). Where, by virtue of s 5(1) (see the text and notes 1-6), a farm business tenancy for a term of more than two years is to continue (as from the term date as defined in s 5(2) (see note 3)) as a tenancy from year to year, a notice to quit which complies with s 6(1) and which is to take effect on the first anniversary of the term date will not be invalid merely because it is given before the term date: s 6(2).

12 Agricultural Tenancies Act 1995 s 7(1) (see the text and note 13) does not, however, apply in relation to a counter-notice given by the tenant by virtue of the Law of Property Act 1925 s 140(2) (apportionment of conditions on severance of reversion: see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555) (Agricultural Tenancies Act 1995 s 7(2)) or to a tenancy which, by virtue of the Law of Property Act 1925 s 149(6) (lease for life or lives or for a term determinable with life or lives or on the marriage of, or formation of a civil partnership by, the lessee: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 240), takes effect as such a term of years as is mentioned in s 149(6) (Agricultural Tenancies Act 1995 s 7(3) (amended by the Civil Partnership Act 2004 s 81, Sch 8 para 49)).

13 Agricultural Tenancies Act 1995 s 7(1) (as amended: see note 6).

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### **(iii) Removal of Fixtures and Fittings**

#### **305. Tenant's right to remove fixtures and buildings.**

Any fixture of whatever description acquired or affixed to a holding<sup>1</sup> by a tenant<sup>2</sup> under a farm business tenancy<sup>3</sup>, and any building<sup>4</sup> acquired or erected by a tenant on such a holding, may be removed by the tenant at any time during the continuance of the tenancy or at any time after the termination of the tenancy<sup>5</sup> when he remains in possession as tenant (whether or not under a new tenancy)<sup>6</sup>. Such fixture remains the tenant's property so long as he may remove it by virtue of these provisions<sup>7</sup>.

These provisions apply notwithstanding any agreement or custom to the contrary<sup>8</sup> but do not apply to:

- 20 (1) a fixture affixed or a building erected in pursuance of some obligation<sup>9</sup>;
- 21 (2) a fixture affixed or a building erected instead of some fixture or building belonging to the landlord<sup>10</sup>;
- 22 (3) a fixture or building in respect of which the tenant has obtained<sup>11</sup> compensation<sup>12</sup>; or
- 23 (4) a fixture or building in respect of which the landlord has given his consent<sup>13</sup> on condition that the tenant agrees not to remove it and which the tenant has agreed not to remove<sup>14</sup>.

1 As to the meaning of 'holding' see PARA 302 note 15.

2 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

3 As to the meaning of 'farm business tenancy' see PARA 302. These provisions apply whether the fixture was acquired or affixed for the purposes of agriculture or not: Agricultural Tenancies Act 1995 s 8(1)(a). As to the meaning of 'agriculture' see PARA 324.

4 'Building' includes any part of a building: Agricultural Tenancies Act 1995 s 38(1).

5 'Termination', in relation to a tenancy, means the cesser of the tenancy by reason of effluxion of time or from any other cause: Agricultural Tenancies Act 1995 s 38(1).

6 Agricultural Tenancies Act 1995 s 8(1), (5). In the removal of a fixture or building by virtue of these provisions the tenant must not do any avoidable damage to the holding (s 8(3)) and immediately after so removing a fixture or building must make good all damage to the holding that is occasioned by the removal (s 8(4)). No right to remove fixtures that subsists otherwise than by virtue of these provisions is exercisable by the tenant under a farm business tenancy: s 8(7).

7 Agricultural Tenancies Act 1995 s 8(1).

8 Agricultural Tenancies Act 1995 s 8(6); for the limited exception to this see s 8(2)(d); and the text and notes 13-14.

9 Agricultural Tenancies Act 1995 s 8(2)(a).

10 Agricultural Tenancies Act 1995 s 8(2)(b). As to the meaning of 'landlord' see PARA 302 note 14. For the power of limited owners to give consents see s 32; and PARA 302 note 20.



- 11    le under the Agricultural Tenancies Act 1995 s 16 (see PARA 311) or otherwise.
- 12    Agricultural Tenancies Act 1995 s 8(2)(c).
- 13    le under the Agricultural Tenancies Act 1995 s 17 (see PARA 311).
- 14    Agricultural Tenancies Act 1995 s 8(2)(d).

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#### **(iv) Rent Reviews**

##### **306. Farm business tenancies generally contracted-out.**

The provisions of the Agricultural Tenancies Act 1995 governing rent reviews under farm business tenancies<sup>1</sup> do not apply to a tenancy<sup>2</sup> which is created by an instrument which:

- 24    (1) expressly states that the rent is not to be reviewed during the tenancy<sup>3</sup>; or
- 25    (2) provides that the rent is to be varied, at a specified time or times during the tenancy, either by or to a specified amount or in accordance with a specified formula which does not preclude a reduction and which does not require or permit the exercise by any person of any judgment or discretion in relation to the determination of the rent of the holding, but otherwise is to remain fixed<sup>4</sup>; or
- 26    (3) does not contain any provision which precludes a reduction in the rent during the tenancy and either expressly states that Part II of the Act (the rent review provisions) does not apply or makes provision for the reference of rent reviews to an independent expert whose decision is final<sup>5</sup>.

Farm business tenancies are, accordingly, capable of being in those specified cases contracted-out of the statutory rent review provisions, although these continue to apply, notwithstanding any agreement to the contrary, in non-contracted-out cases<sup>6</sup>.

1    le the Agricultural Tenancies Act 1995 Pt II (ss 9-14) (see the text and notes 2-6; and PARAS 307-309). As to the meaning of 'farm business tenancy' see PARA 302.

2    As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

3    Agricultural Tenancies Act 1995 s 9(a) (s 9(a) amended, s 9(c) added, by SI 2006/2805).

4    Agricultural Tenancies Act 1995 s 9(b).

5    Agricultural Tenancies Act 1995 s 9(c) (as added: see note 3). Section 9(c) is not applicable where the provision in the instrument creating the tenancy referred to therein is made before 19 October 2006 (ie the date on which the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, was brought into force: see art 1(1)(b)); art 14(3).

6    See the Agricultural Tenancies Act 1995 s 9. As to the statutory rent review provisions see ss 10-14; and PARAS 307-309.

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AGRICULTURAL TENANCIES ACT 1995/(iv) Rent Reviews/307. Rent to be referred to arbitration in statutory rent review cases.

### **307. Rent to be referred to arbitration in statutory rent review cases.**

Unless they have exercised their right to contract-out of the statutory rent review provisions<sup>1</sup>, the landlord<sup>2</sup> or tenant<sup>3</sup> under a farm business tenancy<sup>4</sup> may by notice in writing given to the other<sup>5</sup> require that the rent to be payable in respect of the holding<sup>6</sup> as from the review date<sup>7</sup> be referred to arbitration<sup>8</sup>.

1 As to the statutory rent review provisions see the Agricultural Tenancies Act 1995 ss 10-14; the text and notes 2-8; and PARAS 308-309. For the right to contract-out of these provisions see PARA 306.

2 As to the meaning of 'landlord' see PARA 302 note 14.

3 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

4 As to the meaning of 'farm business tenancy' see PARA 302.

5 This notice is known as a 'statutory review notice': Agricultural Tenancies Act 1995 ss 10(1), 14. As to the giving of notices see PARA 302 note 15. For the power of limited owners to make agreements and enter into transactions see s 32; and PARA 302 note 20.

6 As to the meaning of 'holding' see PARA 302 note 15.

7 'Review date', in relation to a statutory review notice, means a date which is specified in the notice and which complies with the Agricultural Tenancies Act 1995 s 10(3)-(6) (see PARA 308): ss 10(2), 14.

8 Agricultural Tenancies Act 1995 s 10(1). Where a statutory review notice has been given in relation to a farm business tenancy but no arbitrator has been appointed under an agreement made since the notice was given, and no person has been appointed under such an agreement to determine the question of the rent (otherwise than as arbitrator) on a basis agreed by the parties, either party may, at any time during the period of six months ending with the review date, apply to the President of the Royal Institution of Chartered Surveyors (the 'RICS') for the appointment of an arbitrator by him: s 12. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

Any matter which is required to be determined by arbitration under the Agricultural Tenancies Act 1995 must be determined by the arbitration of a sole arbitrator: s 30(1). Any application under the Act to the President of the RICS for the appointment of an arbitrator by him must be made in writing and must be accompanied by such reasonable fee as the President may determine in respect of the costs of making the appointment: s 30(2). Where an arbitrator appointed for the purposes of the Act dies or is incapable of acting and no new arbitrator has been appointed by agreement, either party may apply to the President of the RICS for the appointment of a new arbitrator by him: s 30(3). The arbitrator will act under the Arbitration Act 1996: see s 2; and **ARBITRATION** vol 2 (2008) PARA 1209 et seq.

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### **308. The review date.**

If the parties to a farm business tenancy<sup>1</sup> have agreed in writing that the rent is to be, or may be, varied as from a specified date or dates, or at specified intervals, the review date for the purposes of a statutory rent review<sup>2</sup> of the tenancy must be a date as from which the rent could be varied under the agreement<sup>3</sup>; and if the parties have agreed in writing that the review date for these purposes is to be a specified date or dates, the review date must be that date or one of those dates<sup>4</sup>. If, however, the parties have not so agreed the review date:

- 27 (1) must be an anniversary of the beginning of the tenancy<sup>5</sup> or, where the landlord<sup>6</sup> and the tenant have agreed in writing that the review date for these purposes is to be some other day of the year, that day of the year<sup>7</sup>; and
- 28 (2) must not fall before the end of the period of three years beginning with the latest of:
  - 1
  1. (a) the beginning of the tenancy<sup>8</sup>;
  2. (b) any date as from which there took effect a previous direction of an arbitrator as to the amount of the rent<sup>9</sup>;
  3. (c) any date as from which there took effect a previous determination as to the amount of the rent made, otherwise than as arbitrator, by a person appointed under an agreement between the landlord and the tenant<sup>10</sup>; and
  4. (d) any date as from which there took effect a previous agreement in writing between the landlord and the tenant, entered into since the grant of the tenancy, as to the amount of the rent<sup>11</sup>.
- 2

In any event the review date must be at least 12 months but less than 24 months after the day on which the statutory review notice is given<sup>12</sup>.

1 As to the meaning of 'farm business tenancy' see PARA 302. For the power of limited owners to make agreements and enter into transactions see the Agricultural Tenancies Act 1995 s 32; and PARA 302 note 20.

2 As to such reviews see PARA 307. For the power to contract out of statutory rent reviews see PARA 306.

3 Agricultural Tenancies Act 1995 s 10(4).

4 Agricultural Tenancies Act 1995 s 10(5).

5 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1. As to when a tenancy begins for these purposes see PARA 301 note 2. If a farm business tenancy (the 'new tenancy') arises between a person who immediately before the date of the beginning of the tenancy was entitled to a severed part of the reversionary estate in the land comprised in a farm business tenancy (the 'original tenancy') in which the land to which the new tenancy relates was then comprised and the person who immediately before that date was the tenant under the original tenancy, and the rent payable under the new tenancy at its beginning represents merely the appropriate portion of the rent payable under the original tenancy immediately before the beginning of the new tenancy, references to the 'beginning of the tenancy' in s 10(6) must be taken to be references to the beginning of the original tenancy and references to 'rent' in s 10(6) must be taken to be references to the rent payable under the original tenancy until the first occasion following the beginning of the new tenancy on which any such direction, determination or agreement with respect to the rent of the new holding as is mentioned in s 10(6) takes effect: s 11.

6 As to the meaning of 'landlord' see PARA 302 note 14.

7 Agricultural Tenancies Act 1995 s 10(6)(a).

8 Agricultural Tenancies Act 1995 s 10(6)(b)(i).

9 Agricultural Tenancies Act 1995 s 10(6)(b)(ii). As to the appointment of an arbitrator for the purposes of a rent review under the Agricultural Tenancies Act 1995 see PARA 307.

10 Agricultural Tenancies Act 1995 s 10(6)(b)(iii).

11 Agricultural Tenancies Act 1995 s 10(6)(b)(iv).

12 Agricultural Tenancies Act 1995 s 10(3). There is no prescribed form. As to the giving of the statutory review notice see PARA 307. As to the giving of notices generally see PARA 302 note 15.

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### 309. Amount of rent.

On any reference made in pursuance of a statutory review notice<sup>1</sup>, the arbitrator<sup>2</sup> must determine the rent properly payable in respect of the holding<sup>3</sup> at the review date<sup>4</sup> and accordingly must, with effect from that date, increase or reduce the rent previously payable or direct that it continues unchanged<sup>5</sup>. For these purposes the rent properly payable in respect of a holding is the rent at which the holding might reasonably be expected to be let on the open market by a willing landlord to a willing tenant<sup>6</sup>, taking into account all relevant factors<sup>7</sup>, subject to the proviso that the arbitrator:

- 29 (1) must disregard any increase in the rental value of the holding which is due to tenant's improvements<sup>8</sup>;
- 30 (2) must disregard any effect on the rent of the fact that the tenant who is a party to the arbitration is in occupation of the holding<sup>9</sup>; and
- 31 (3) must not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, buildings<sup>10</sup> or land caused or permitted by the tenant<sup>11</sup>.

1 As to the giving of the statutory review notice see PARA 307.

2 As to the appointment of an arbitrator for the purposes of a rent review under the Agricultural Tenancies Act 1995 see PARA 307.

3 As to the meaning of 'holding' see PARA 302 note 15.

4 As to the review date see PARA 308.

5 Agricultural Tenancies Act 1995 s 13(1). See *Barclays Bank plc v Bean* [2004] 3 EGLR 71, [2005] BPIR 563.

6 Agricultural Tenancies Act 1995 s 13(2).

7 The 'relevant factors' for these purposes include (in every case) the terms of the tenancy (including those which are relevant for the purposes of the Agricultural Tenancies Act 1995 s 10(4)-(6) (see PARA 308), but not those which (apart from s 13) preclude a reduction in the rent during the tenancy: s 13(2) (amended by SI 2006/2805).

8 Agricultural Tenancies Act 1995 s 13(3). 'Tenant's improvement', and references to the provision of such an improvement, have the meanings given by s 15 (see PARA 310): ss 13(5), 34(2). The arbitrator is not required to disregard any increase in the rental value of the holding which is due to:

- 10 (1) any tenant's improvement provided under an obligation which was imposed on the tenant by the terms of his tenancy or any previous tenancy and which arose on or before the beginning of the tenancy in question (s 13(3)(a));
- 11 (2) any tenant's improvement to the extent that any allowance or benefit has been made or given by the landlord in consideration of its provision (s 13(3)(b)); and
- 12 (3) any tenant's improvement to the extent that the tenant has received any compensation from the landlord in respect of it (s 13(3)(c)).

As to compensation for tenant's improvements see PARAS 310-319. As to when a tenancy begins for these purposes see PARA 301 note 2.

In estimating the best rent or reservation in the nature of rent of land comprised in a farm business tenancy for the purposes of a relevant instrument, it is not necessary to take into account against the tenant any increase in the value of that land arising from any tenant's improvements: s 34(1). 'Relevant instrument' means any Act of Parliament, deed or other instrument which authorises a lease to be made on the condition that the best rent

or reservation in the nature of rent is reserved: s 34(2). As to the meaning of 'farm business tenancy' see PARA 302.

9 Agricultural Tenancies Act 1995 s 13(4)(a).

10 As to the meaning of 'building' see PARA 305 note 4.

11 Agricultural Tenancies Act 1995 s 13(4)(b).

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## **(v) Compensation for Improvements**

### **310. Meaning of 'tenant's improvement'.**

For these purposes<sup>1</sup> a 'tenant's improvement', in relation to any farm business tenancy<sup>2</sup>, means either:

- 32 (1) any physical improvement which is made on the holding<sup>3</sup> by the tenant<sup>4</sup> by his own effort or wholly or partly at his own expense<sup>5</sup>; or
- 33 (2) any intangible advantage which is obtained for the holding by the tenant by his own effort or wholly or partly at his own expense and becomes attached to the holding<sup>6</sup>.

For these purposes references to the 'provision' of a tenant's improvement are references to the making by the tenant of any physical improvement falling within head (1) above or the obtaining by the tenant of any intangible advantage falling within head (2) above<sup>7</sup>.

1 Ie for the purposes of the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see the text and notes 2-7; and PARAS 311-319).

2 As to the meaning of 'farm business tenancy' see PARA 302.

3 As to the meaning of 'holding' see PARA 302 note 15.

4 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

5 Agricultural Tenancies Act 1995 ss 15(a), 27. The purposes authorised by the Settled Land Act 1925 s 73 (see **SETTLEMENTS** vol 42 (Reissue) PARA 808) or the Universities and College Estates Act 1925 s 26 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379) for the application of capital money include the payment of expenses incurred by a landlord under a farm business tenancy in, or in connection with, the making of any physical improvement on the holding: Agricultural Tenancies Act 1995 s 33(1)(a) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4). For the power of limited owners to enter into transactions see the Agricultural Tenancies Act 1995 s 32; and PARA 302 note 20.

6 Agricultural Tenancies Act 1995 s 15(b).

7 Agricultural Tenancies Act 1995 s 15.

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AGRICULTURAL TENANCIES ACT 1995/(v) Compensation for Improvements/311. Tenant's right to compensation for improvements.

### 311. Tenant's right to compensation for improvements.

In general<sup>1</sup>, the tenant<sup>2</sup> under a farm business tenancy<sup>3</sup> is entitled on the termination<sup>4</sup> of the tenancy, on quitting the holding<sup>5</sup>, to obtain from his landlord<sup>6</sup> compensation in respect of any tenant's improvement<sup>7</sup>. A tenant's entitlement in this regard does not, however, extend to any physical improvement which is removed from the holding or any intangible advantage which does not remain attached to the holding<sup>8</sup>.

A tenant is not entitled to compensation<sup>9</sup> in respect of a tenant's improvement which consists of planning permission<sup>10</sup> unless:

- 34 (1) the landlord has given his consent in writing<sup>11</sup> to the making of the application for planning permission<sup>12</sup>;
- 35 (2) that consent is expressed to be given for the purpose of enabling a specified physical improvement<sup>13</sup> lawfully to be provided by the tenant or of enabling the tenant lawfully to effect a specified change of use<sup>14</sup>; and
- 36 (3) on the termination of the tenancy, the specified physical improvement has not been completed or the specified change of use has not been effected<sup>15</sup>.

Other than where the tenant's improvement consists of planning permission<sup>16</sup>, a tenant is not entitled to compensation in respect of any tenant's improvement unless the landlord has given his consent in writing to the provision of the tenant's improvement<sup>17</sup>.

The statutory provisions providing for the payment to outgoing tenants of compensation for milk quota<sup>18</sup> do not apply in relation to a farm business tenancy<sup>19</sup>.

1 The subject to the provisions of the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see the text and notes 2-19; and PARAS 312-319).

2 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

3 As to the meaning of 'farm business tenancy' see PARA 302.

4 As to the 'termination' of a farm business tenancy see PARA 305 note 5.

5 As to the meaning of 'holding' see PARA 302 note 15.

6 As to the meaning of 'landlord' see PARA 302 note 14. For the power of limited owners to give consents, make agreements and enter into transactions see the Agricultural Tenancies Act 1995 s 32; and PARA 302 note 20.

7 Agricultural Tenancies Act 1995 s 16(1). As to the meaning of 'tenant's improvement' see PARA 310. As to the amount of compensation payable see PARAS 313-314. The purposes authorised by the Settled Land Act 1925 s 73 (see **SETTLEMENTS** vol 42 (Reissue) PARA 808) or the Universities and College Estates Act 1925 s 26 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379) for the application of capital money, and the purposes authorised by the Settled Land Act 1925 s 71 (see **SETTLEMENTS** vol 42 (Reissue) PARA 849) as purposes for which money may be raised by mortgage, include the payment of compensation under the Agricultural Tenancies Act 1995 s 16 (s 33(1)(b), (2) (s 33(1), (2), (4) amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4)).

Where the landlord under a farm business tenancy is a tenant for life or in a fiduciary position and is liable to pay compensation under the Agricultural Tenancies Act 1995 s 16, he may require the sum payable as compensation and any costs, charges and expenses incurred by him in connection with the tenant's claim thereunder to be paid out of any capital money held on the same trusts as the settled land: s 33(3). For this purpose 'capital money' includes any personal estate held on the same trusts as the land: s 33(4) (as so amended).

Any compensation payable under s 16 by the Chancellor of the Duchy of Lancaster may be raised and paid under the Duchy of Lancaster Act 1817 s 25 (application of monies) as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy: Agricultural Tenancies Act 1995 s 37(5). In the case of land belonging to the Duchy of Cornwall, the purposes authorised by the Duchy of Cornwall Management Act 1863 s 8 (application of monies: see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 339) for the advancement of parts of such gross sums as are there mentioned include the payment of compensation under the Agricultural Tenancies Act 1995 s 16 (s 37(6)), although nothing in this requirement is to be taken as prejudicing the operation of the Duchy of Cornwall Management Act 1982 (Agricultural Tenancies Act 1995 s 37(7)). As to the application of the Agricultural Tenancies Act 1995 to Crown land see PARA 303. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

At common law an agricultural tenant is not entitled to compensation from his landlord for improvements or acts of husbandry of which the landlord obtains the benefit when the tenant quits the holding, although this rule could be modified by the custom of the country and the parties could themselves provide for compensation in their agreement: see *Wigglesworth v Dallison* (1779) 1 Doug KB 201. As to the right to compensation in respect of tenancies governed by the Agricultural Holdings Act 1986 see PARA 414 et seq.

8 Agricultural Tenancies Act 1995 s 16(2).

9 Ie under the Agricultural Tenancies Act 1995 s 16 (see the text and notes 1-8).

10 As to the meaning of 'planning permission' see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 43 (definition applied by the Agricultural Tenancies Act 1995 s 27). Where a physical improvement which has been completed or a change of use which has been effected is authorised by any planning permission granted on an application made by the tenant, these provisions (ie s 18: see the text and notes 11-15) do not prevent any value attributable to the fact that the physical improvement or change of use is so authorised from being taken into account under s 20 (see PARA 313) in determining the amount of compensation payable in respect of the physical improvement or in respect of any intangible advantage obtained as a result of the change of use: s 20(4).

11 Any such consent may be given either unconditionally or on condition that the tenant agrees to a specified variation in the terms of the tenancy: Agricultural Tenancies Act 1995 s 18(2). Such variation must be related to the physical improvement or change of use in question: s 18(3).

12 Agricultural Tenancies Act 1995 s 18(1)(a).

13 Ie a specified physical improvement falling within the Agricultural Tenancies Act 1995 s 15(a) (see PARA 310).

14 Agricultural Tenancies Act 1995 s 18(1)(b).

15 Agricultural Tenancies Act 1995 s 18(1)(c).

16 Agricultural Tenancies Act 1995 s 17(5).

17 Agricultural Tenancies Act 1995 s 17(1). Any such consent may be given in the instrument creating the tenancy or elsewhere (s 17(2)) and may be given either unconditionally or on condition that the tenant agrees to a specified variation in the terms of the tenancy (s 17(3)), provided that any such variation is related to the tenant's improvement in question (s 17(4)).

Provision is made for the resolution by arbitration of disputes arising from a refusal of, a failure to give, or any variation in the terms of a tenancy required by the landlord as a condition of, consent under s 17(1): see s 19; and PARA 312.

18 Ie the Agriculture Act 1986 s 13, Sch 1; PARA 423; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 739-749.

19 Agricultural Tenancies Act 1995 s 16(3).

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### 312. Disputes as to landlord's consent to improvements.

Where in relation to any tenant's improvement<sup>1</sup> the tenant<sup>2</sup> under a farm business tenancy<sup>3</sup> is aggrieved by:

- 37 (1) the refusal of his landlord<sup>4</sup> to give his consent<sup>5</sup> to the provision of the improvement<sup>6</sup>;
- 38 (2) the failure of his landlord to give such consent within two months of a written request by the tenant for such consent<sup>7</sup>; or
- 39 (3) any variation in the terms of the tenancy required by the landlord as a condition of giving such consent<sup>8</sup>,

the tenant may, unless:

- 40 (a) he has already provided or begun to provide the improvement in question (unless that improvement is a routine improvement)<sup>9</sup>;
- 41 (b) the period of two months beginning with the day on which notice of the refusal or variation<sup>10</sup> was given to the tenant has elapsed<sup>11</sup>; or
- 42 (c) the period of four months beginning with the day on which the written request<sup>12</sup> was given to the landlord has elapsed<sup>13</sup>,

by notice in writing given to the landlord demand that the question be referred to arbitration<sup>14</sup>.

The arbitrator<sup>15</sup> must consider whether, having regard to the terms of the tenancy and any other relevant circumstances (including the circumstances of the tenant and the landlord), it is reasonable for the tenant to provide the tenant's improvement<sup>16</sup>. He may unconditionally approve the provision of the tenant's improvement or may withhold his approval (although he may not give his approval subject to any condition or vary any condition required<sup>17</sup> by the landlord)<sup>18</sup>, and if he gives his approval it has effect for these purposes<sup>19</sup> and for the purposes of the terms of the farm business tenancy as if it were the consent of the landlord<sup>20</sup>.

1 As to the meaning of 'tenant's improvement' see PARA 310.

2 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

3 As to the meaning of 'farm business tenancy' see PARA 302.

4 As to the meaning of 'landlord' see PARA 302 note 14.

5 He under the Agricultural Tenancies Act 1995 s 17(1) (see PARA 311). For the power of limited owners to give consents see s 32; and PARA 302 note 20.

6 Agricultural Tenancies Act 1995 s 19(1)(a).

7 Agricultural Tenancies Act 1995 s 19(1)(b).

8 Agricultural Tenancies Act 1995 s 19(1)(c).

9 Agricultural Tenancies Act 1995 s 19(2). 'Routine improvement', in relation to a farm business tenancy, means any tenant's improvement which is a physical improvement made in the normal course of farming the holding or any part of the holding and does not consist of fixed equipment or an improvement to fixed equipment, but does not include any improvement whose provision is prohibited by the terms of the tenancy: s 19(10). As to the meaning of 'holding' see PARA 302 note 15. As to the 'farming' of land see PARA 324. 'Fixed equipment' includes any building or structure affixed to land and any works constructed on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or its produce, or amenity: s 19(10). As to the meaning of 'building' see PARA 305 note 4.



10 le the refusal or variation referred to in the Agricultural Tenancies Act 1995 s 19(1)(a) or (c) (see the text and notes 1-8). As to the giving of notices see PARA 302 note 15.

11 Agricultural Tenancies Act 1995 s 19(3)(a).

12 le the request referred to in the Agricultural Tenancies Act 1995 s 19(1)(b) (see the text and note 7).

13 Agricultural Tenancies Act 1995 s 19(3)(b).

14 Agricultural Tenancies Act 1995 s 19(1). 'Arbitration' means arbitration under s 19. For general provisions as to arbitrations under the Agricultural Tenancies Act 1995 see s 30; and PARA 307 note 8. The purposes authorised by the Settled Land Act 1925 s 73 (see **SETTLEMENTS** vol 42 (Reissue) PARA 808) or the Universities and College Estates Act 1925 s 26 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379) for the application of capital money include the payment of the costs, charges and expenses incurred by a landlord under a farm business tenancy on a reference to arbitration under these provisions: Agricultural Tenancies Act 1995 s 33(1) (c) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4).

15 Where the tenant has given notice under the Agricultural Tenancies Act 1995 s 19(1) (see the text and notes 1-14) but no arbitrator has been appointed under an agreement made since the notice was given, the tenant or the landlord may apply to the President of the Royal Institution of Chartered Surveyors (the 'RICS') for the appointment of an arbitrator by him: s 19(4). No such application may, however, be made at any time after giving a notice under s 19(1) in relation to any tenant's improvement which is not a routine improvement where the tenant has begun to provide the improvement (s 19(9)(a)); and where such an application has been made but no arbitrator has been appointed before that time, the application will be ineffective (s 19(9)(b)). As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

16 Agricultural Tenancies Act 1995 s 19(5).

17 le under the Agricultural Tenancies Act 1995 s 17(3) (see PARA 311). In a case falling within s 19(1)(c) (see the text and note 8) the withholding by the arbitrator of his approval does not affect the validity of the landlord's consent or of the condition subject to which it was given: s 19(8).

18 Agricultural Tenancies Act 1995 s 19(6). Where, at any time after giving a notice under s 19(1) in relation to any tenant's improvement which is not a routine improvement, the tenant begins to provide the improvement, no award may be made by virtue of s 19(6) after that time except as to the costs of the reference and award in a case where the arbitrator was appointed before that time: s 19(9)(c).

19 le for the purposes of the Agricultural Tenancies Act 1995 Pt III (ss 15-27).

20 Agricultural Tenancies Act 1995 s 19(7).

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### **313. Amount of compensation for improvements not consisting of planning permission.**

The amount of compensation payable to a tenant<sup>1</sup> in respect of any tenant's improvement<sup>2</sup> which does not consist of planning permission<sup>3</sup> is an amount equal to the increase attributable to the improvement in the value of the holding<sup>4</sup> at the termination of the tenancy as land comprised in a tenancy<sup>5</sup>. Where the landlord and the tenant have entered into an agreement in writing whereby any benefit is given or allowed to the tenant in consideration of the provision of a tenant's improvement, the amount of compensation otherwise payable in respect of that improvement is reduced by the proportion which the value of the benefit bears to the amount of the total cost of providing the improvement<sup>6</sup>.

Where a grant has been or will be made to the tenant out of public money in respect of a tenant's improvement, the amount of compensation otherwise payable in respect of that

improvement is reduced by the proportion which the amount of the grant bears to the amount of the total cost of providing the improvement<sup>7</sup>.

Where after 19 October 2006 the landlord and the tenant have agreed in writing to limit the amount of compensation payable in respect of any tenant's improvement<sup>8</sup>, that amount must be the lesser of the amount determined in accordance with the statutory provisions relating to the calculation of the amount of compensation payable in respect of tenant's improvements not consisting of planning permission<sup>9</sup> and the compensation limit<sup>10</sup>.

1     Ie under the Agricultural Tenancies Act 1995 s 16 (see PARA 311). As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

2     As to the meaning of 'tenant's improvement' see PARA 310.

3     As to the meaning of 'planning permission' see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 43 (definition applied by the Agricultural Tenancies Act 1995 s 27). As to the amount of compensation in respect of tenant's improvements which consist of planning permission see PARA 314.

4     As to the meaning of 'holding' see PARA 302 note 15. In any case falling within the Agricultural Tenancies Act 1995 s 24(1)(a) or (b) (compensation for improvements where possession of part of holding is resumed: see PARA 316), these provisions apply on the termination of the tenancy in relation to the land then comprised in the tenancy, as if the references therein to the 'holding' were a reference to the original holding (see PARA 316 note 9), although this is subject to the proviso that where the landlord and the tenant have agreed in writing to limit the amount of compensation payable under the Agricultural Tenancies Act 1995 s 16 (see PARA 311) in respect of any tenant's improvement not consisting of planning permission, that improvement is provided for both the relevant part (ie the part of the holding of which the landlord has resumed possession) and the land comprised in the tenancy after the termination date, the case falls within s 24(1)(a) or (b), the tenant has already received compensation in respect of the improvement determined in accordance with s 24(2) (see PARA 316) and further compensation in respect of the improvement is payable under s 16 on termination of the tenancy, the compensation limit referred to in s 20(4A) (see the text and notes 8-10) must, for the purposes of determining that further compensation, be reduced by an amount equal to the amount of compensation already received by the tenant in respect of the improvement: s 24(1)(a), (4), (4A) (ss 20(1), 24(4) amended, ss 20(4A), (4B), 24(4A) added, by SI 2006/2805). As to the meaning of 'landlord' see PARA 302 note 14. As to the 'termination' of a farm business tenancy see PARA 305 note 5.

5     Agricultural Tenancies Act 1995 s 20(1), (5) (s 20(1) as amended: see note 4).

6     Agricultural Tenancies Act 1995 s 20(2). For the power of limited owners to make agreements see s 32; and PARA 302 note 20.

7     Agricultural Tenancies Act 1995 s 20(3).

8     Ie under the Agricultural Tenancies Act 1995 s 16 (see PARA 311).

9     Ie the Agricultural Tenancies Act 1995 s 20(1)-(4) (see the text and notes 1-7; and PARA 311).

10    Agricultural Tenancies Act 1995 s 20(4A) (as added: see note 4). 'Compensation limit' means either an amount agreed by the parties in writing or, where the parties are unable to agree on an amount, an amount equal to the cost to the tenant of making the improvement: s 20(4B) (as so added). See, however, note 4.

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### **314. Amount of compensation for improvements consisting of planning permission.**

The amount of compensation payable to the tenant<sup>1</sup> in respect of a tenant's improvement<sup>2</sup> which consists of planning permission<sup>3</sup> is an amount equal to the increase attributable to the

fact that the relevant development<sup>4</sup> is authorised by the planning permission in the value of the holding<sup>5</sup> at the termination of the tenancy as land comprised in a tenancy<sup>6</sup>.

Where the landlord and the tenant have entered into an agreement in writing whereby any benefit is given or allowed to the tenant in consideration of the obtaining of planning permission by the tenant, the amount of compensation otherwise payable in respect of that permission is reduced by the proportion which the value of the benefit bears to the amount of the total cost of obtaining the permission<sup>7</sup>.

1     Ie under the Agricultural Tenancies Act 1995 s 16 (see PARA 311). As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

2     As to the meaning of 'tenant's improvement' see PARA 310.

3     As to the meaning of 'planning permission' see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 43 (definition applied by the Agricultural Tenancies Act 1995 s 27).

4     Ie the physical improvement or change of use specified in the landlord's consent under the Agricultural Tenancies Act 1995 s 18 (see PARA 311) in accordance with s 18(1)(b): s 21(2).

5     As to the meaning of 'holding' see PARA 302 note 15. In any case falling within the Agricultural Tenancies Act 1995 s 24(1)(a) or (b) (compensation for improvements where possession of part of holding is resumed: see PARA 316), these provisions apply on the termination of the tenancy in relation to the land then comprised in the tenancy, as if the references therein to the 'holding' were a reference to the original holding (see PARA 316 note 9), although this is subject to the proviso that where the landlord and the tenant have agreed in writing to limit the amount of compensation payable under the Agricultural Tenancies Act 1995 s 16 (see PARA 311) in respect of any tenant's improvement not consisting of planning permission, that improvement is provided for both the relevant part (ie the part of the holding of which the landlord has resumed possession) and the land comprised in the tenancy after the termination date, the case falls within s 24(1)(a) or (b), the tenant has already received compensation in respect of the improvement determined in accordance with s 24(2) (see PARA 316) and further compensation in respect of the improvement is payable under s 16 on termination of the tenancy, the compensation limit referred to in s 20(4A) (see PARA 312) must, for the purposes of determining that further compensation, be reduced by an amount equal to the amount of compensation already received by the tenant in respect of the improvement: s 24(1)(a), (4), (4A) (s 24(4) amended, s 24(4A) added, by SI 2006/2805). As to the meaning of 'landlord' see PARA 302 note 14. As to the 'termination' of a farm business tenancy see PARA 305 note 5.

6     Agricultural Tenancies Act 1995 s 21(1).

7     Agricultural Tenancies Act 1995 s 21(3). For the power of limited owners to make agreements see s 32; and PARA 302 note 20.

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### **315. Compensation in event of successive tenancies.**

Where the tenant<sup>1</sup> under a farm business tenancy<sup>2</sup> has remained in the holding<sup>3</sup> during two or more such tenancies he will not be deprived of his right to compensation<sup>4</sup> by reason only that any tenant's improvement<sup>5</sup> was provided during a tenancy other than the one at the termination<sup>6</sup> of which he quits the holding<sup>7</sup>.

The landlord<sup>8</sup> and tenant under a farm business tenancy may agree that the tenant is to be entitled to compensation on the termination of the tenancy even though at that termination the tenant remains in the holding under a new tenancy<sup>9</sup>, and where the landlord and the tenant have so agreed in relation to any tenancy (the 'earlier tenancy'), the tenant is not entitled to

compensation at the end of any subsequent tenancy in respect of any tenant's improvement provided during the earlier tenancy in relation to the land comprised in the earlier tenancy<sup>10</sup>.

- 1 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.
- 2 As to the meaning of 'farm business tenancy' see PARA 302.
- 3 As to the meaning of 'holding' see PARA 302 note 15.
- 4 See under the Agricultural Tenancies Act 1995 s 16 (see PARA 311). As to the amount of compensation in relation to improvements not consisting of planning permission see PARA 313; and as to the amount of compensation in relation to improvements consisting of planning permission see PARA 314.
- 5 As to the meaning of 'tenant's improvement' see PARA 310.
- 6 As to the 'termination' of a farm business tenancy see PARA 305 note 5.
- 7 Agricultural Tenancies Act 1995 s 23(1).
- 8 As to the meaning of 'landlord' see PARA 302 note 14.
- 9 Agricultural Tenancies Act 1995 s 23(2). For the power of limited owners to make agreements see s 32; and PARA 302 note 20.
- 10 Agricultural Tenancies Act 1995 s 23(3).

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### **316. Compensation where possession of part of holding is resumed.**

Where the landlord<sup>1</sup> under a farm business tenancy<sup>2</sup> resumes possession of part of the holding<sup>3</sup> in pursuance of any provision of the tenancy<sup>4</sup> or a person entitled to a severed part of the reversionary estate in a holding held under a farm business tenancy resumes possession of part of the holding by virtue of a notice to quit that part given<sup>5</sup> to the tenant<sup>6</sup>, the statutory provisions relating to the payment of compensation for tenant's improvements<sup>7</sup> apply to that part of the holding (the 'relevant part') as if it were a separate holding which the tenant had quitted in consequence of a notice to quit and, in the latter case<sup>8</sup>, as if the person resuming possession were the landlord of that separate holding<sup>9</sup>.

- 1 As to the meaning of 'landlord' see PARA 302 note 14.
- 2 As to the meaning of 'farm business tenancy' see PARA 302.
- 3 As to the meaning of 'holding' see PARA 302 note 15.
- 4 Agricultural Tenancies Act 1995 s 24(1)(a). As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.
- 5 See by virtue of the Law of Property Act 1925 s 140 (apportionment of conditions on severance of reversion: see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555).
- 6 Agricultural Tenancies Act 1995 s 24(1)(b).
- 7 See the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see PARA 310 et seq).

8 le in a case falling within the Agricultural Tenancies Act 1995 s 24(1)(b) (see the text and notes 5-6).

9 Agricultural Tenancies Act 1995 s 24(1). This is subject to the proviso that the amount of compensation payable to the tenant under s 16 (see PARA 311) in respect of any tenant's improvement provided for the relevant part by the tenant and not consisting of planning permission must, subject to s 20(2)-(4) (see PARAS 311, 313), be an amount equal to the increase attributable to the tenant's improvement in the value of the original holding on the termination date as land comprised in a tenancy (s 24(2) (s 24(2), (5) amended by SI 2006/2805)) and that the amount of compensation so payable under the Agricultural Tenancies Act 1995 s 16 in respect of any tenant's improvement which consists of planning permission relating to the relevant part must, subject to s 21(3) (see PARA 314), be an amount equal to the increase attributable to the fact that the relevant development is authorised by the planning permission in the value of the original holding on the termination date as land comprised in a tenancy (s 24(3)).

As to the meaning of 'planning permission' see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 43 (definition applied by the Agricultural Tenancies Act 1995 s 27). As to the meaning of 'tenant's improvement' see PARA 310. 'Original holding' means the land comprised in the farm business tenancy on the date when the landlord gave his consent under s 17 or s 18 (see PARA 311) in relation to the tenant's improvement or, where approval in relation to the tenant's improvement was given by an arbitrator, on the date on which that approval was given: s 24(5) (as so amended). 'Relevant development', in relation to any tenant's improvement which consists of planning permission, has the meaning given by the Agricultural Tenancies Act 1995 s 21(2) (see PARA 314): s 24(5) (as so amended). 'Termination date' means the date on which possession of the relevant part was resumed: s 24(5) (as so amended).

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### **317. Compensation where reversionary estate in holding is severed.**

Where the reversionary estate in the holding<sup>1</sup> comprised in a farm business tenancy<sup>2</sup> is for the time being vested in more than one person in several parts, the tenant<sup>3</sup> is entitled, on quitting the entire holding, to require that any compensation payable to him<sup>4</sup> is determined as if the reversionary estate were not so severed<sup>5</sup>. Where these provisions apply, the arbitrator<sup>6</sup> must, where necessary, apportion the amount awarded between the persons who for these purposes<sup>7</sup> together constitute the landlord<sup>8</sup> of the holding, and any additional costs of the award caused by the apportionment must be directed by the arbitrator to be paid by those persons in such proportions as he determines<sup>9</sup>.

1 As to the meaning of 'holding' see PARA 302 note 15.

2 As to the meaning of 'farm business tenancy' see PARA 302.

3 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

4 le under the Agricultural Tenancies Act 1995 s 16 (see PARA 311). As to the amount of compensation in relation to improvements not consisting of planning permission see PARA 313; and as to the amount of compensation in relation to improvements consisting of planning permission see PARA 314.

5 Agricultural Tenancies Act 1995 s 25(1).

6 For general provisions as to arbitrations under the Agricultural Tenancies Act 1995 see s 30; and PARA 307 note 8.

7 le for the purposes of the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see PARA 310 et seq).

8 As to the meaning of 'landlord' see PARA 302 note 14.

9 Agricultural Tenancies Act 1995 s 25(2).

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### **318. Settlement of claims for compensation.**

No claim by a tenant<sup>1</sup> under a farm business tenancy<sup>2</sup> for compensation for improvements<sup>3</sup> is enforceable unless before the end of the period of two months beginning with the date of the termination of the tenancy<sup>4</sup> the tenant has given notice in writing to his landlord<sup>5</sup> of his intention to make the claim and of the nature of the claim<sup>6</sup>, and any such claim by a tenant must<sup>7</sup> be determined by arbitration<sup>8</sup>.

Where the landlord and the tenant have not settled the claim by agreement in writing and no arbitrator has been appointed under an agreement made since the notice of claim<sup>9</sup> was given, either party may, after the end of the period of four months beginning with the date of the termination of the tenancy<sup>10</sup>, apply<sup>11</sup> for the appointment of an arbitrator<sup>12</sup>.

1 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

2 As to the meaning of 'farm business tenancy' see PARA 302.

3 I.e. under the Agricultural Tenancies Act 1995 s 16 (see PARA 311). As to the amount of compensation in relation to improvements not consisting of planning permission see PARA 313; and as to the amount of compensation in relation to improvements consisting of planning permission see PARA 314.

4 As to the 'termination' of a farm business tenancy see PARA 305 note 5. Where a tenant lawfully remains in occupation of part of the holding after the termination of a farm business tenancy, references in the Agricultural Tenancies Act 1995 s 22(2), (3) to the termination of the tenancy must, in the case of a claim relating to that part of the holding, be construed as references to the termination of the occupation: s 22(5). As to the meaning of 'holding' see PARA 302 note 15.

5 As to the meaning of 'landlord' see PARA 302 note 14. As to the giving of notices see PARA 302 note 15.

6 Agricultural Tenancies Act 1995 s 22(2).

7 I.e. subject to the provisions of the Agricultural Tenancies Act 1995 s 22 (see the text and notes 8-12).

8 Agricultural Tenancies Act 1995 s 22(1). The arbitration referred to in the text is arbitration under s 22. For general provisions as to arbitrations under the Agricultural Tenancies Act 1995 see s 30; and PARA 307 note 8. The purposes authorised by the Settled Land Act 1925 s 73 (see **SETTLEMENTS** vol 42 (Reissue) PARA 808) or the Universities and College Estates Act 1925 s 26 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379) for the application of capital money include the payment of the costs, charges and expenses incurred by a landlord under a farm business tenancy on a reference to arbitration under these provisions: Agricultural Tenancies Act 1995 s 33(1)(c) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4).

9 I.e. the notice under the Agricultural Tenancies Act 1995 s 22(2) (see the text and notes 1-6).

10 See note 4.

11 I.e. to the President of the Royal Institution of Chartered Surveyors (the 'RICS'): s 22(3). As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

12 Agricultural Tenancies Act 1995 s 22(3). Where an application under s 22(3) relates wholly or partly to compensation in respect of a routine improvement which the tenant has provided or has begun to provide and that application is made at the same time as an application under s 19(4) (see PARA 312) relating to the provision of that improvement, the President of the RICS must appoint the same arbitrator on both applications and, if both applications are made by the same person, only one fee is payable by virtue of s 30(2) (see PARA 307 note 8): s 22(4). As to the meaning of 'routine improvement' see s 19(10); and PARA 312 note 9 (definition applied by s 22(4)(a)).

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### **319. Contractual provisions on compensation.**

A tenant<sup>1</sup> is entitled to compensation in accordance with the statutory provisions governing compensation<sup>2</sup> and not otherwise, and is so entitled notwithstanding any agreement to the contrary<sup>3</sup>. Nothing in those provisions<sup>4</sup> should be construed as disentitling a tenant to compensation in any case for which those provisions do not provide for compensation<sup>5</sup>.

1 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

2 ie the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (apart from s 26) (see PARAS 310-318).

3 Agricultural Tenancies Act 1995 s 26(1).

4 See note 2.

5 Agricultural Tenancies Act 1995 s 26(2).

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## **(vi) Arbitration and Resolution of Disputes**

### **320. Determination of disputes.**

Special provision is made for the determination by arbitration<sup>1</sup> of:

- 43 (1) rent in pursuance of a statutory review notice<sup>2</sup>;
- 44 (2) disputes arising from a refusal of, a failure to give, or any variation in the terms of a tenancy<sup>3</sup> required by the landlord<sup>4</sup> as a condition of, consent to the provision of a tenant's improvement<sup>5</sup>;
- 45 (3) any claim for compensation for tenant's improvements<sup>6</sup>; or
- 46 (4) any dispute relating to rent review, in any case where the provisions relating to rent reviews<sup>7</sup> are excluded<sup>8</sup>.

Any other dispute between the landlord and the tenant under a farm business tenancy<sup>9</sup>, under the terms of the tenancy or under any custom, must be determined by arbitration<sup>10</sup> unless:

- 47 (a) the tenancy is created by an instrument which includes provision for disputes to be resolved<sup>11</sup> by any person other than the landlord or the tenant or a third party appointed by either of them without the consent or concurrence of the other<sup>12</sup>; and
- 48 (b) either the landlord and the tenant have jointly referred the dispute to the third party under that provision<sup>13</sup> or the landlord or the tenant has referred the

dispute to the third party under that provision and notified the other in writing of the making of the reference<sup>14</sup>.

1 For general provisions as to arbitrations under the Agricultural Tenancies Act 1995 see s 30; and PARA 307 note 8.

2 Agricultural Tenancies Act 1995 s 28(5)(a). As to rent reviews see PARAS 306-309. As to the meaning of 'statutory review notice' see s 10(1); and PARA 307 (definition applied by s 28(5)(a)).

3 As to the meanings of 'tenant' and 'tenancy' see PARA 301 note 1.

4 As to the meaning of 'landlord' see PARA 302 note 14.

5 Agricultural Tenancies Act 1995 s 28(5)(b). As to such disputes see s 19(1); and PARA 312. As to the meaning of 'tenant's improvement' see PARA 310.

6 Agricultural Tenancies Act 1995 s 28(5)(c). As to claims for compensation for tenant's improvements see Pt III (ss 15-27); and PARAS 310-319. As to the arbitration provisions see PARA 318.

7 Ie the Agricultural Tenancies Act 1995 Pt II (ss 9-14) (see PARAS 306-309).

8 Agricultural Tenancies Act 1995 s 28(5)(d) (added by SI 2006/2805). As to the exclusion of the provisions relating to rent reviews see the Agricultural Tenancies Act 1995 s 9(c)(ii); and PARA 306. This provision does not apply where the provision in the instrument creating the tenancy referred to in s 9(c) is made before 19 October 2006 (ie the date on which the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, was brought into force: see art 1(1)(b)); art 14(3).

9 Ie a dispute concerning the rights and obligations of the landlord and the tenant under the Agricultural Tenancies Act 1995: s 28(1). As to the meaning of 'farm business tenancy' see PARA 302.

10 Agricultural Tenancies Act 1995 s 28(1). Where such a dispute has arisen, the landlord or the tenant may give notice in writing to the other specifying the dispute and stating that, unless before the end of the period of two months beginning with the day on which the notice is given the parties have appointed an arbitrator by agreement, he proposes to apply to the President of the Royal Institution of Chartered Surveyors (the 'RICS') for the appointment of an arbitrator by him: s 28(2). Where such a notice has been given, but no arbitrator has been appointed by agreement, either party may, after the end of the period of two months referred to in s 28(2), apply to the President of the RICS for the appointment of an arbitrator by him: s 28(3). As to the giving of notices see PARA 302 note 15. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

11 For these purposes a term of the tenancy does not provide for disputes to be 'resolved' by any person unless that person (whether or not acting as arbitrator) is enabled under the terms of the tenancy to give a decision which is binding in law on both parties: Agricultural Tenancies Act 1995 s 29(2).

12 Agricultural Tenancies Act 1995 s 29(1)(a). For the power of limited owners to give consents and make agreements see s 32; and PARA 302 note 20.

13 Agricultural Tenancies Act 1995 s 29(1)(b)(i).

14 Agricultural Tenancies Act 1995 s 29(1)(b)(ii). This provision applies only if the period of four weeks beginning with the date on which the landlord or the tenant was notified as referred to in the text has expired and the other has not given a notice under s 28(2) (see note 10) in relation to the dispute before the end of that period: s 29(1)(b)(ii).

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## **(2) AGRICULTURAL TENANCIES UNDER THE**

### **(i) Tenancies to which the Act Applies**



### 321. Continuing application of the Agricultural Holdings Act 1986.

Notwithstanding the enactment of the Agricultural Tenancies Act 1995, which makes new provision governing tenancies of agricultural holdings created on or after 1 September 1995<sup>1</sup>, the Agricultural Holdings Act 1986 continues to apply to all agricultural tenancies created before that date<sup>2</sup> and to certain tenancies (principally succession tenancies) granted after that date which are specifically excluded from the application of the Agricultural Tenancies Act 1995<sup>3</sup>. Subject to this and to other specified provisions<sup>4</sup>, the Agricultural Holdings Act 1986 applies in relation to tenancies of agricultural holdings whenever created, agreements whenever made, and other things whenever done<sup>5</sup>.

1    ie the date on which the Agricultural Tenancies Act 1995 was brought into force: see s 41(2). Agricultural tenancies to which the Agricultural Tenancies Act 1995 applies are held as 'farm business tenancies' provided they comply with specified conditions: see PARA 301 et seq.

2    Thus the Agricultural Holdings Act 1986 continues to apply to all existing agricultural tenancies and also to those granted by a written contract of tenancy entered into before 1 September 1995 and indicating (in whatever terms) that the Agricultural Holdings Act 1986 is to apply in relation to the tenancy: see the Agricultural Tenancies Act 1995 s 4(1)(a); and PARA 301.

3    See the Agricultural Tenancies Act 1995 ss 2, 4(1); and PARA 322.

4    ie subject to the Agricultural Holdings Act 1986 ss 4, 34 (see PARAS 328, 400), Sch 12 (modifications), and any other provision to the contrary: s 98(1).

5    Agricultural Holdings Act 1986 s 98(1). Provision is made for the modification of the Agricultural Holdings Act 1986 in relation to tenancies of agricultural holdings granted or agreed to be granted, agreements made, and things done before certain dates no later than 1 March 1948 (ie the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342): see the Agricultural Holdings Act 1986 s 98(2), Sch 12 paras 1-5, 10. Special provision is also made with respect to compensation for tenant right matters in relation to tenants of agricultural holdings who entered into occupation before specified dates not later than 31 December 1951 (ie the date on which the Agricultural Holdings Act (Variation of Fourth Schedule) Order 1951, SI 1951/2168 (revoked) came into operation): see the Agricultural Holdings Act 1986 s 98(3), Sch 12 paras 6-9. As to the meaning of 'agricultural holding' see PARA 323.

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### 322. Tenancies which cannot be farm business tenancies.

The only tenancies commencing after 1 September 1995<sup>1</sup> to which the Agricultural Holdings Act 1986 can apply are:

- 49 (1) tenancies obtained by virtue of a direction of an agricultural land tribunal<sup>2</sup> under the statutory provisions relating to succession to agricultural tenancies on death or retirement<sup>3</sup>;
- 50 (2) tenancies granted<sup>4</sup> where a successful application for succession on death has been made<sup>5</sup>;
- 51 (3) tenancies granted on an agreed succession by a written contract of tenancy indicating (in whatever terms) that the provisions relating to the death or retirement of an agricultural tenant<sup>6</sup> are to apply in relation to the tenancy<sup>7</sup>;

- 52 (4) tenancies created by the acceptance of a tenant, in accordance with the provisions as to compensation known as the 'Evesham custom'<sup>8</sup>, on the terms and conditions of the previous tenancy<sup>9</sup>;
- 53 (5) tenancies granted to a person who, immediately before the grant, was the tenant of the holding, or of any agricultural holding<sup>10</sup> which comprised the whole or a substantial part of the land comprised in the holding, under a tenancy in relation to which the Agricultural Holdings Act 1986 applied and which is so granted because an agreement between the parties (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy<sup>11</sup> (there being a limited exception to this category<sup>12</sup>); or
- 54 (6) tenancies granted to a person who, immediately before the grant, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a tenancy in relation to which the Agricultural Holdings Act 1986 applied, and which is so granted by a written contract of tenancy indicating (in whatever terms) that that Act is to apply in relation to the tenancy<sup>13</sup> (there being a limited exception to this category<sup>14</sup>).

1    le the date on which the Agricultural Tenancies Act 1995 was brought into force: see s 41(2). The Agricultural Holdings Act 1986 continues to apply to all existing agricultural tenancies including those agreed to be granted by a written contract of tenancy entered into before 1 September 1995 and indicating (in whatever terms) that the Agricultural Holdings Act 1986 is to apply in relation to the tenancy: see the Agricultural Tenancies Act 1995 s 4(1)(a); and PARAS 301, 321.

2    As to agricultural land tribunals see PARAS 670-673.

3    Agricultural Tenancies Act 1995 ss 2, 4(1)(b). The statutory provisions relating to succession to agricultural tenancies on death or retirement are the Agricultural Holdings Act 1986 ss 39, 53 (see PARAS 405, 410).

4    le following a direction under the Agricultural Holdings Act 1986 s 39 (see PARA 405) in circumstances falling within s 45(6) (see PARA 407).

5    Agricultural Tenancies Act 1995 s 4(1)(c).

6    le the Agricultural Holdings Act 1986 Pt IV (ss 34-59) (see PARAS 400-413).

7    Agricultural Tenancies Act 1995 s 4(1)(d). For this purpose a tenancy (the 'current tenancy') is granted on an agreed succession if, and only if:

- 13    (1) the previous tenancy of the holding or a related holding was a tenancy in relation to which the Agricultural Holdings Act 1986 Pt IV (ss 34-59) (see PARAS 400-413) applied (Agricultural Tenancies Act 1995 s 4(2)(a) (s 4(1)(e), (f), (2)(a) amended, s 4(1)(g), (2)(c), (2A)-(2C), (3)(c) added, s 4(2)(b) substituted, by SI 2006/2805));
- 14    (2) the current tenancy is granted to a person (alone or jointly with other persons) who, if the tenant under that previous tenancy (the 'previous tenant') had died immediately before the grant, would have been his close relative (Agricultural Tenancies Act 1995 s 4(2)(b) (as so substituted)); and
- 15    (3) either the current tenancy is granted to a person (alone or jointly with other persons) who was or had become the sole or sole remaining applicant for a direction of an agricultural land tribunal for a tenancy (s 4(2)(c), (2A)(a) (as so added)) or the current tenancy is granted as a result of an agreement between the landlord and the previous tenant (s 4(2A)(b)(i) (as so added)) and is granted, and begins, before the date of the giving of any retirement notice by the previous tenant, or if no retirement notice is given, before the date of death of the previous tenant (s 4(2A)(b)(ii) (as so added)).

As to the meanings of 'close relative', 'related holding' and 'retirement notice' for these purposes see the Agricultural Holdings Act 1986 ss 35(2), 49(3); and PARAS 401 note 5, 402 note 2 (definitions applied by the Agricultural Tenancies Act 1995 s 4(3)(b), (c) (s 4(3)(c) as so added)). The amendments made by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, do not apply to any tenancy granted before the amendments came into force (ie 19 October 2006): see art 1(1)(b), 12(12).

- 8 As to the 'Evesham custom' see the Agricultural Holdings Act 1986 s 80(3)-(5); and PARA 466.
- 9 Agricultural Tenancies Act 1995 s 4(1)(e).
- 10 As to the meaning of 'agricultural holding' see PARA 323.
- 11 Agricultural Tenancies Act 1995 s 4(1)(f) (as amended: see note 7).
- 12 The Agricultural Holdings Act 1986 will not apply by virtue of the Agricultural Tenancies Act 1995 s 4(1)(f) or s 4(1)(g) (see the text and notes 11, 13) in relation to the tenancy of an agricultural holding (the 'current holding') where:
- 16 <sup>(1)</sup> the whole or a substantial part of the land comprised in the current holding was comprised in an agricultural holding (the 'previous holding') which was subject to a tenancy granted after 19 October 2006 in relation to which the Agricultural Holdings Act 1986 applied by virtue of the Agricultural Tenancies Act 1995 s 4(1)(f) or s 4(1)(g) (s 4(2B)(a) (as added: see note 7));
  - 17 <sup>(2)</sup> the whole or a substantial part of the land comprised in the previous holding was comprised in an agricultural holding (the 'original holding') which was at 19 October 2006 subject to a tenancy in relation to which the Agricultural Holdings Act 1986 applied (Agricultural Tenancies Act 1995 s 4(2B)(b) (as so added)); and
  - 18 <sup>(3)</sup> the land comprised in the original holding does not, on the date of the grant of the tenancy of the current holding, comprise the whole or a substantial part of the land comprised in the current holding (s 4(2B)(c) (as so added)).
- The references in s 4(1)(g) and s 4(2B) to a 'substantial part of the land comprised in the holding' mean a substantial part determined by reference to either area or value: s 4(2C) (as so added).
- 13 Agricultural Tenancies Act 1995 s 4(1)(g) (as amended: see note 7).
- 14 See note 12.

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## (ii) Definitions

### 323. Meaning of 'agricultural holding'.

An 'agricultural holding' is the aggregate of the land (whether agricultural land<sup>1</sup> or not<sup>2</sup>) comprised in a contract of tenancy<sup>3</sup> which is a contract for an agricultural tenancy<sup>4</sup>, not being a contract under which the land is let to the tenant<sup>5</sup> during his continuance in any office, appointment<sup>6</sup> or employment held under the landlord<sup>7</sup>. A contract for an agricultural tenancy relating to any land exists if, having regard to the terms of the tenancy<sup>8</sup>, to the actual or contemplated use of the land at the time the contract was concluded and subsequently<sup>9</sup>, and to any other relevant circumstances<sup>10</sup>, the whole of the land comprised in the contract, subject to such exceptions only as do not substantially affect the character of the tenancy, is let for use as agricultural land<sup>11</sup>.

1 As to the meaning of 'agricultural land' see PARA 324.

2 Mixed user is contemplated by the words 'whether agricultural land or not', and it is the aggregate of land and the land users that may determine the existence of an agricultural holding. There must be a tenancy of land which is either all in agricultural use or else partly in agricultural use and partly in non-agricultural use when the non-agricultural part is of such minor consequence as not substantially to affect the character of the tenancy: *Short v Greeves* [1988] 1 EGLR 1, CA; *Russell v Booker* (1982) 5 HLR 10, [1982] 2 EGLR 86; *Weatherall v Smith* [1980] 2 All ER 530, [1980] 1 WLR 1290, CA; *Hickson & Welch Ltd v Cann* (1977) 40 P & CR 218n, CA. There is no minimum size: *Stevens v Sedgeman* [1951] 2 KB 434, [1951] 2 All ER 33, CA; and see *Craddock v*

*Hampshire County Council* [1958] 1 All ER 449, [1958] 1 WLR 202, CA. A mixed tenancy cannot be severed such that the provisions relating to agricultural holdings apply to the part which is used for agriculture and not to the part which is used for other purposes: *Howkins v Jardine* [1951] 1 KB 614, [1951] 1 All ER 320. The contract of tenancy may restrict the user so that only agricultural activities are permitted: *Jewell v McGowan* [2002] EWCA Civ 145, [2002] 3 EGLR 87.

3 As to the meaning of 'contract of tenancy' see PARA 325.

4 As to the meaning of 'contract for an agricultural tenancy' see the text and notes 8-11.

5 'Tenant' means the holder of land under a contract of tenancy and includes the executors, administrators, assigns or trustee in bankruptcy of a tenant, or other person deriving title from a tenant: Agricultural Holdings Act 1986 s 96(1); Agriculture (Miscellaneous Provisions) Act 1968 s 17(1) (amended by the Agricultural Holdings Act 1986 Sch 14 para 46). It does not include an assignee of farming stock or of a right to statutory compensation (as to which see PARA 418 et seq): *Ecclesiastical Comrs for England v National Provincial Bank Ltd* [1935] 1 KB 566, CA. If a trustee in the tenant's bankruptcy disclaims the tenancy, he loses all benefits under the lease: *Schofield v Hincks* (1888) 58 LJQB 147; *Re Morrish, ex p Sir W Hart-Dyke* (1882) 22 ChD 410, CA; *Re Wadsley, Bettinson's Representative v Trustee* (1925) 94 LJ Ch 215.

The designation of 'tenant' continues to apply to the parties until the conclusion of any proceedings taken under or in pursuance of the Agricultural Holdings Act 1986 in respect of compensation: s 96(6).

6 A tenancy for a trial period is not an appointment: *Verrall v Farnes* [1966] 2 All ER 808, [1966] 1 WLR 1254.

7 Agricultural Holdings Act 1986 s 1(1); Agriculture (Miscellaneous Provisions) Act 1968 s 17(1) (as amended: see note 5). 'Landlord' means any person entitled for the time being to receive the rents and profits of any land (Agricultural Holdings Act 1986 s 96(1); Agriculture (Miscellaneous Provisions) Act 1968 s 17(1) (as so amended)), and the designation of 'landlord' continues to apply to the parties until the conclusion of any proceedings taken under or in pursuance of the Agricultural Holdings Act 1986 in respect of compensation (Agricultural Holdings Act 1986 s 96(6); Agriculture (Miscellaneous Provisions) Act 1968 s 17(1) (as so amended)). Thus a purchaser may become landlord, though he will not be landlord until entitled either at law or in equity to receive the rents and profits, that is normally until the date fixed for completion of the purchase: *Farrow v Orttewell* [1933] Ch 480 at 484 per Bennett J (decision, but not this particular statement, affd on appeal [1933] Ch 488, CA). Cf *Tombs v Turvey* (1923) 93 LJB 785, CA (clause in sale agreement disentitling purchaser to rent); *Richards v Pryse* [1927] 2 KB 76, CA (completion held to mean the date of actual completion, not the day fixed for completion). This definition of 'landlord' does not, however, affect the common law rule that only the legal estate owner may serve a notice to quit: *Farrow v Orttewell* at 485.

8 Agricultural Holdings Act 1986 s 1(2)(a).

9 Agricultural Holdings Act 1986 s 1(2)(b). Any subsequent change of use of the land for agriculture contrary to the terms of the tenancy does not make it subject to an agricultural tenancy unless it has been effected with the landlord's permission, consent or acquiescence: s 1(3).

10 Agricultural Holdings Act 1986 s 1(2)(c).

11 Agricultural Holdings Act 1986 s 1(2).

## UPDATE

### **323-324 Meaning of 'agricultural holding', 'Agriculture', 'agricultural', 'agricultural land' and 'farming'**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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### 324. 'Agriculture', 'agricultural', 'agricultural land' and 'farming'.

For the purposes of the principal legislation relating to agricultural land<sup>1</sup>, 'agriculture' is defined as including horticulture, fruit growing, seed growing, dairy farming and livestock<sup>2</sup> breeding and keeping, the use of land as grazing land<sup>3</sup>, meadow land, osier land, market gardens and nursery grounds<sup>4</sup>, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes, and 'agricultural' is construed accordingly<sup>5</sup>. References to the 'farming' of land include references to the carrying on in relation to the land of any agricultural activity<sup>6</sup>.

For the purposes of the Agriculture Act 1947, the Agriculture Act 1967, the Agriculture Act 1970 Pt III and the Agricultural Holdings Act 1986 'agricultural land' means land used for agriculture<sup>7</sup> which is so used for the purposes of a trade or business<sup>8</sup>, or which is designated<sup>9</sup> by the Secretary of State or the Welsh Ministers<sup>10</sup>, and it includes any land so designated as land which in the opinion of the Secretary of State or the Welsh Ministers ought to be brought into use for agriculture<sup>11</sup>.

1 For the purposes of the Agriculture Act 1947, the Agriculture Act 1967, the Agriculture Act 1970 Pt III (ss 37-65), the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995. This definition is also used for the purposes of the Town and Country Planning Act 1990, and in a less exhaustive form for the purposes of the legislation governing allotments and cottage holdings (see note 5).

2 'Livestock' includes any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land, and in the Agricultural Holdings Act 1986 also includes the carrying on in relation to land of any agricultural activity: Agriculture Act 1947 s 109(3); Agriculture Act 1970 s 37(4); Agricultural Holdings Act 1986 s 96(1); Agricultural Tenancies Act 1995 s 38(1). Hence it will normally exclude horses; and land used for keeping horses rather than grazing by horses is not land used for agriculture: see *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 60 LGR 319, 13 P & CR 417, DC; *Sykes v Secretary of State for the Environment* (1980) 42 P & CR 19, [1981] 1 EGLR 137, DC; *McClinton v McFall* (1974) 232 Estates Gazette 707. Fish farming is agriculture (*Minister of Agriculture, Fisheries and Food v Appleton* [1970] 1 QB 221, [1969] 3 All ER 1051, DC), as is keeping bees for the production of honey, but keeping pheasants for shooting is not (*Earl of Normanton v Giles* [1980] 1 All ER 106, [1980] 1 WLR 28, HL; *Reeve v Atterby* [1978] CLY 73; *Lord Glendyne v Rapley* [1978] 2 All ER 110, [1978] 1 WLR 601, CA).

3 The grazing need not be by 'livestock' as defined in note 2: see *Rutherford v Maurer* [1962] 1 QB 16, [1961] 2 All ER 775, CA (decided in relation to the identical definition in the Agricultural Holdings Act 1948 s 94(1) (repealed)).

4 There is no definition of 'market gardening' in the Agricultural Holdings Act 1986 or any of the principal legislation relating to agriculture. An experimental bulb farm is not a market garden (*Watters v Hunter* 1927 SC 310 at 317, Ct of Sess), but land used for growing raspberries for jam-making has been held to be (*Grewar v Moncur's Curator Bonis* 1916 SC 764, Ct of Sess) and so has land used as an orchard with rhubarb and other crops grown underneath the trees, the fruit and crops being sold (*Lowther v Clifford* [1927] 1 KB 130, CA). In *Bickerdike v Lucy* [1920] 1 KB 707 (decided under the Corn Production Act 1917 (repealed)) a person employed in a private garden, some of the produce of which was sold, was held not to be employed in a market garden; see also *Re Wallis, ex p Sully* (1885) 14 QBD 950; and cf *Roberts v Wynn* [1950] WN 300, DC (garden run as business within definition). Land covered with glass-houses for the purpose of growing fruit and vegetables for sale was held to be a market garden or nursery ground for the purposes of assessment under the Public Health Act 1875 s 211(1)(b) (repealed): *Purser v Worthing Local Board of Health* (1887) 18 QBD 818, CA; but cf *Smith v Richmond* [1899] AC 448, HL.

5 Agriculture Act 1947 s 109(3); Agriculture Act 1967 s 75(2); Agriculture Act 1970 s 37(4); Agricultural Holdings Act 1986 s 96(1); Agricultural Tenancies Act 1995 s 38(1); Town and Country Planning Act 1990 s 336(1). Less exhaustive versions of this definition have effect for the purposes of the legislation governing allotments and cottage holdings: in the Small Holdings and Allotments Act 1908 and the Agricultural Land (Utilisation) Act 1931 'agriculture' (and 'cultivation') include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables, and the like (Small Holdings and Allotments Act 1908 s 61(1); Agricultural Land (Utilisation) Act 1931 s 20(2)), and 'land' includes any right or easement in or over land (Small Holdings and Allotments Act 1908 s 61(2)); while for the purposes of the Allotments Act 1922 'agriculture' includes forestry, horticulture, or the keeping and breeding of livestock (s 22(1)).

6 Agriculture Act 1947 s 109(5); Agriculture Act 1967 s 75(2); Agriculture Act 1970 s 37(4); Agricultural Holdings Act 1986 s 96(4); Agricultural Tenancies Act 1995 s 38(2).

7 References in the Agriculture Act 1947, the Agriculture Act 1967 and the Agricultural Holdings Act 1986 to 'the use of land for agriculture' include, in relation to land forming part of an agricultural unit, references to any use of the land in connection with the farming of the unit: Agriculture Act 1947 s 109(6); Agriculture Act 1967 s 75(2); Agricultural Holdings Act 1986 s 96(5). A dwelling house may be land 'used for agriculture'; it is a question of fact and degree whether it is so used in any particular case: *Blackmore v Butler* [1954] 2 QB 171, [1954] 2 All ER 403, CA (where a cottage occupied by an agricultural worker, without land other than its site and a garden, was held in the particular circumstances of that case to be 'agricultural land').

An 'agricultural unit' is land which is occupied as a unit for agricultural purposes, including any dwelling house or other building occupied by the same person for the purpose of farming the land and any other land falling within the definition of 'agricultural land' which is in the occupation of the same person, being land as to which the Secretary of State is or the Welsh Ministers are satisfied that, having regard to its character and situation and other relevant circumstances (which, in relation to an owner or occupier, include all circumstances affecting management or farming other than the personal circumstances of the owner or occupier (Agriculture Act 1947 s 109(3))), it ought in the interests of full and efficient production to be farmed in conjunction with the agricultural unit, and he directs or they direct accordingly (s 109(2); Agriculture Act 1967 s 75(2); Agricultural Holdings Act 1986 s 96(1)). The Secretary of State and the Welsh Ministers must not give such a direction as respects any land unless it is for the time being not in use for any purpose which appears to him or them to be substantial, having regard to the use to which it might be put for agriculture: Agriculture Act 1947 s 109(2) proviso. 'Owner' was defined by s 21 (repealed) and meant, subject to certain exceptions, the person in whom the legal estate in fee simple was vested. In relation to any agricultural activity, the person having the right to carry it on is deemed to be the 'occupier' of the land: s 109(5); Agriculture Act 1970 s 37(4).

8 'Trade or business' is not confined to agricultural trades or businesses: *Rutherford v Maurer* [1962] 1 QB 16, [1961] 2 All ER 775, CA (tenancy of a field let for grazing horses for a riding school is an agricultural holding, whereas an identical letting for the tenant's personal hunting horses will not be). The use of the land, however, must be agricultural: see *Blackmore v Butler* [1954] 2 QB 171, [1954] 2 All ER 403, CA (see note 7); *Iredell v Brocklehurst* (1950) 155 Estates Gazette 268, CA. See also *Dow Agrochemicals Ltd v EA Lane (North Lynn) Ltd* (1965) 115 Ljo 76, 192 Estates Gazette 737, CCA. An allotment cultivated to produce food for sale as a trade or business falls within this definition, but an allotment garden cultivated by the occupier to produce food for home consumption does not: see *Stevens v Sedgeman* [1951] 2 KB 434, [1951] 2 All ER 33, CA. As to allotment gardens see PARA 510.

9 le designated for the purposes of the Agriculture Act 1947 s 109(1) and, by extension, the Agricultural Holdings Act 1986 s 96(1).

10 As to the Secretary of State and the Welsh Ministers see PARA 643.

11 Agriculture Act 1947 s 109(1); Agriculture Act 1967 s 75(2); Agriculture Act 1970 s 37(4); Agricultural Holdings Act 1986 s 1(4). Such designations are not to extend to land used as pleasure grounds, private gardens or allotment gardens, or to land kept or preserved mainly or exclusively for the purposes of sport or recreation, except where the Secretary of State or the Welsh Ministers are satisfied that its use for agriculture would not be inconsistent with its use for those purposes and it is so stated in the designation: Agriculture Act 1947 s 109(1) proviso. 'Allotment garden' means an allotment not exceeding 0.10 hectare in extent which is wholly or mainly cultivated by the occupier for the production of vegetables or fruit for consumption by himself or his family: Allotments Act 1922 s 22(1); Agriculture Act 1947 s 109(3) (amended by SI 1978/446); Allotments Act 1922 s 14(1); Agriculture Act 1970 s 37(4): this definition is also used for the purposes of the Emergency Laws (Miscellaneous Provisions) Act 1953 (see s 5(4)(a)). The report of the Departmental Committee of Inquiry into Allotments 1969 (Cmnd 4166) recommended that allotment gardens be termed 'leisure gardens' and suggested a definition (see paras 672-681 of that report).

## UPDATE

### **323-324 Meaning of 'agricultural holding', 'Agriculture', 'agricultural', 'agricultural land' and 'farming'**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **324 'Agriculture', 'agricultural', 'agricultural land' and 'farming'**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **325. Contract of tenancy.**

A 'contract of tenancy' is a letting of land, or an agreement<sup>1</sup> for letting land, for a term of years<sup>2</sup> or from year to year<sup>3</sup>, and a letting or an agreement converted into a letting or agreement for 90 years<sup>4</sup> is deemed to be a letting of, or an agreement for letting, land for a term of years<sup>5</sup>. It does not include an attornment clause in a mortgage<sup>6</sup>. There must be a single contract of tenancy<sup>7</sup>.

1 'Agreement' includes an agreement arrived at by means of valuation or otherwise, and 'agreed' has a corresponding meaning: Agricultural Holdings Act 1986 s 96(1).

2 A tenancy for a definite term of more than one year but less than two years is a letting for a term of years for these purposes: *EWP Ltd v Moore* [1992] QB 460, [1992] 1 All ER 880, CA.

3 For the provisions as to land let for an interest less than a tenancy from year to year see PARA 327.

4 Le by the Law of Property Act 1925 s 149(6) (lease for life or lives or for a term determinable with life or lives or on the marriage of, or formation of a civil partnership by, the lessee: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 240).

5 Agricultural Holdings Act 1986 s 1(5).

6 *Steyning and Littlehampton Building Society v Wilson* [1951] Ch 1018, [1951] 2 All ER 452; *Wyatt v King* (1951) 157 Estates Gazette 124 (followed in *Alliance Building Society v Pinwill* [1958] Ch 788, [1958] 2 All ER 408). These cases were decided under identical provisions in the Agricultural Holdings Act 1948 (repealed).

7 *Darby v Williams* (1974) 232 Estates Gazette 579; *Blackmore v Butler* [1954] 2 QB 171, [1954] 2 All ER 403, CA.

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### **(iii) Statutory Protection of Tenants**

#### **326. Protection of annual tenants.**

The Agricultural Holdings Act 1986 provides lifetime security of tenure for tenants by imposing restrictions on the operation of a notice to quit; in order that a landlord should not avoid these provisions the Act treats certain agreements as if they were annual tenancies<sup>1</sup>. Tenancies for fixed terms of more than one year but less than two are not protected by these provisions<sup>2</sup>.

1 See PARA 327 et seq.

2 *Gladstone v Bower* [1960] 2 QB 384, [1960] 3 All ER 353, CA.

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### **327. Conversion of lettings for less than from year to year, and licences.**

Subject to certain exceptions<sup>1</sup>, where any land is let<sup>2</sup> to a person for use as agricultural land<sup>3</sup> for an interest less than a tenancy from year to year<sup>4</sup> or a person is granted a licence to occupy land for use as agricultural land<sup>5</sup>, where the circumstances are such that if his interest were a tenancy from year to year he would in respect of that land be the tenant<sup>6</sup> of an agricultural holding<sup>7</sup>, then the agreement takes effect as if it were a tenancy from year to year<sup>8</sup>. A tenancy for one year exactly is converted into a tenancy from year to year<sup>9</sup>. Where the question is one of conversion of a licence, the licence must give exclusive rights of occupation and not involve sharing with the landowner<sup>10</sup>. Gratuitous<sup>11</sup> and non-contractual<sup>12</sup> licences are excluded. A licence of any duration may be converted<sup>13</sup>.

The conversion of a letting under these provisions does not apply where:

- 55 (1) the Secretary of State or the Welsh Ministers<sup>14</sup> has or have approved the agreement before it was entered into<sup>15</sup>;
- 56 (2) the agreement for the letting of the land or the granting of the licence to occupy the land was made (whether or not it expressly so provided) in contemplation of the use of the land only for grazing or mowing (or both) during some specified period of the year<sup>16</sup>;
- 57 (3) the licence or tenancy was granted by a person whose interest in the land was less than a tenancy from year to year<sup>17</sup>; or
- 58 (4) the agreement was made before 1 March 1948<sup>18</sup> and was a periodic tenancy less than from year to year<sup>19</sup>.

A prerequisite of conversion is a true relationship of landlord<sup>20</sup> and tenant, and, therefore, conversion is not applicable to an attornment under a mortgage<sup>21</sup>.

Grazing or mowing agreements<sup>22</sup> have to be restricted to these purposes in order for the exemption from conversion to apply, and if so restricted will not be converted if the tenant or licensee ploughs<sup>23</sup>. The inclusion of small ancillary buildings will not cause the tenancy or licence to be converted<sup>24</sup>. If a grazier is permitted to remain in occupation on the expiry of a grazing agreement without any express new agreement there is an implication of renewal of the expired agreement rather than the creation of a tenancy from year to year<sup>25</sup>. The agreement has to be restricted to a specified period of a year<sup>26</sup>. There may be successive grazing agreements running for several years but this of itself will not take them outside the exception<sup>27</sup>. A letting of 'six month periods', however, implies a minimum of two such periods and hence a year, and is thus converted into a tenancy from year to year<sup>28</sup>.

Any arrangements entered into on or after 1 September 1995<sup>29</sup> where exclusive possession is given will be farm business tenancies to which these provisions are inapplicable<sup>30</sup>.

1 See the text and notes 14-19.



- 2     le under the Agricultural Holdings Act 1986. New lettings of agricultural land are, in general, covered by the Agricultural Tenancies Act 1995 (see PARA 301 et seq). See also the text and notes 29-30.
- 3     As to the meanings of 'agricultural' and 'agricultural land' see PARA 324.
- 4     Agricultural Holdings Act 1986 s 2(2)(a).
- 5     Agricultural Holdings Act 1986 s 2(2)(b).
- 6     As to the meaning of 'tenant' see PARA 323 note 5.
- 7     As to the meaning of 'agricultural holding' see PARA 323.
- 8     Agricultural Holdings Act 1986 s 2(1). As to the meaning of 'agreement' see PARA 325 note 1. These provisions take effect subject to necessary modifications, such as relating to the date on which the rent falls due; and furthermore the agreement takes effect as a tenancy from year to year as from the date of the original agreement rather than from the expiry date of the original contractual term: see *Calcott v JS Bloor (Measham) Ltd* [1998] 1 WLR 1490, [1998] 3 EGLR 1, CA. In *Davies v Davies* [2002] EWCA Civ 1791, 146 Sol Jo LB 281 (a one-off obligation to re-seed prevented the arrangement from being converted into a yearly tenancy).
- 9     *Bernays v Prosser* [1963] 2 QB 592, [1963] 2 All ER 321, CA.
- 10    *Harrison-Broadley v Smith* [1964] 1 All ER 867, [1964] 1 WLR 456, CA; *Bahamas International Trust Co Ltd v Threadgold* [1974] 3 All ER 881, [1974] 1 WLR 1514, HL. As to the particular problems of farming through the medium of a limited company see *Troop v Gibson* [1986] 1 EGLR 1, 277 Estates Gazette 1134, CA. See also *McCarthy v Bence* [1990] 1 EGLR 1, [1990] 17 EG 78, CA. See also *Well Barn Farming Ltd v Backhouse* [2005] EWHC 1520 (Ch), [2005] 3 EGLR 109 (predecessor landlord had received consideration for licence as he had been allowed to cut back woodland).
- 11    *Mitton v Farrow* [1980] 2 EGLR 1, 255 Estates Gazette 449, CA (an agreement to bring the land into good heart may be adequate consideration); and see also *Verrall v Farnes* [1966] 2 All ER 808, [1966] 1 WLR 1254; *Goldsack v Shore* [1950] 1 KB 708, [1950] 1 All ER 276, CA.
- 12    *Collier v Hollinshead* [1984] 2 EGLR 14, 272 Estates Gazette 941 (family relationship).
- 13    *Snell v Snell* (1964) 191 Estates Gazette 361, CA.
- 14    As to the Secretary of State and the Welsh Ministers see PARA 643.
- 15    Agricultural Holdings Act 1986 s 2(1); and see *Finbow v Air Ministry* [1963] 2 All ER 647, [1963] 1 WLR 697; *Bedfordshire County Council v Clarke* (1974) 230 Estates Gazette 1587; *Epsom and Ewell Borough Council v C Bell (Tadworth) Ltd* [1983] 2 All ER 59, [1983] 1 WLR 379; *Secretary of State for Social Services v Beavington* (1982) 262 Estates Gazette 551.
- 16    Agricultural Holdings Act 1986 s 2(3)(a). See the text and notes 22-28. See also *Brown v Tiernan* (1992) 65 P & CR 324, [1993] 1 EGLR 11 (agreement restricting grazing of cattle to a specified period of the year, but permitting use of the land for other purposes for the whole of the year is not within the exception in the Agricultural Holdings Act 1986 s 2(3)(a)).
- 17    Agricultural Holdings Act 1986 s 2(3)(b).
- 18    le the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 19    Agricultural Holdings Act 1986 s 98, Sch 12 para 1.
- 20    As to the meaning of 'landlord' see PARA 323 note 7.
- 21    *Steyning and Littlehampton Building Society v Wilson* [1951] Ch 1018, [1951] 2 All ER 452.
- 22    See the text and note 16.
- 23    *Lory v London Borough of Brent* [1971] 1 All ER 1042, [1971] 1 WLR 823; but see also *Boyce v Rendells* (1983) 268 Estates Gazette 268, CA; and contrast with a contract of agistment (see **ANIMALS** vol 2 (2008) PARAS 721-723).
- 24    *Avon County Council v Clothier* (1977) 75 LGR 344, 242 Estates Gazette 1048, CA.

25 *Reid v Dawson* [1955] 1 QB 214, [1954] 3 All ER 498, CA.

26 *Reid v Dawson* [1955] 1 QB 214, [1954] 3 All ER 498, CA. Cf *Barnes v Hadley Court* (1981) unreported, CA, where an agreement from a specified date was held to include that date and thereby to include the whole year and to be converted; *Chaloner v Bower* [1984] 1 EGLR 4, 269 Estates Gazette 725, CA; *Watts v Yeend* [1987] 1 All ER 744, [1987] 1 WLR 323, CA. Cf *Stone v Whitcombe* (1980) 40 P & CR 296, 257 Estates Gazette 929, CA.

27 *Scene Estates Ltd v Amos* [1957] 2 QB 205, [1957] 2 All ER 325, CA; cf where the parties expressly agreed to renewals, the statutory conversion applied: *Short Bros (Plant) Ltd v Edwards* (1978) 249 Estates Gazette 539; and see *South West Water Authority v Palmer* (1983) 268 Estates Gazette 357, CA.

28 *Rutherford v Maurer* [1962] 1 QB 16, [1961] 2 All ER 775, CA.

29 Ie the date on which the Agricultural Tenancies Act 1995 was brought into force: see PARA 321 note 1; and PARA 301 et seq.

30 See the Agricultural Tenancies Act 1995 ss 1, 4; and PARA 301 et seq.

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### **328. Tenancies for two years or more.**

Instead of terminating on the term date<sup>1</sup>, a tenancy<sup>2</sup> of an agricultural holding<sup>3</sup> for a term of two years or more continues as a tenancy from year to year unless either party gives written notice<sup>4</sup> of intention to terminate the tenancy not less than one year nor more than two years before the term date<sup>5</sup>, or unless the tenant dies before the term date<sup>6</sup>. Such a notice is deemed to be a notice to quit<sup>7</sup>. An agreement<sup>8</sup> purporting to exclude these provisions is ineffective except where, in relation to a tenancy for not less than two nor more than five years, the proposed landlord and tenant so agree and, on a joint written application by them, the Secretary of State or the Welsh Ministers<sup>9</sup> notify them of his or their approval; the tenancy has to be in writing and must indicate, either in itself or by indorsement upon it, that the relevant provisions do not apply<sup>10</sup>.

Where a tenancy to which these provisions apply has been granted to any person or persons on or after 12 September 1984<sup>11</sup> and that person (or the survivor) dies before the term date<sup>12</sup>, and no notice to terminate the tenancy has been given, then the tenancy is terminable<sup>13</sup>. If the death occurs a year or more before the term date the tenancy terminates on the term date<sup>14</sup>; if the death occurs at any other time the tenancy continues for a further 12 months and expires on the first anniversary of the term date<sup>15</sup>. Termination of the tenancy on death is deemed to be termination by reason of a notice to quit given by the landlord, and the tenant's right to compensation for disturbance<sup>16</sup> is preserved<sup>17</sup>.

1 'Termination', in relation to a tenancy, means the cesser of the contract of tenancy by reason of effluxion of time or from any other cause: Agricultural Holdings Act 1986 s 96(1). Where the contract of tenancy is rescinded and occupation abandoned by reason of the failure of one of the parties to perform a necessary condition of the contract, there is no termination of the tenancy within the meaning of this definition: see *Todd v Bowie* (1902) 4 F 435 (decided under the Agricultural Holdings (Scotland) Act 1883). If by the terms of the agreement, or by custom, a tenant is entitled or required to give up possession of different parts of his holding at different times, the termination of the tenancy takes place at the time when the last part of the holding held under the contract of tenancy is given up by the tenant: *Swinburne v Andrews* [1923] 2 KB 483, CA; followed in *Re Arden and Rutter* [1923] 2 KB 865, CA. Cf *Black v Clay* [1894] AC 368, HL; *Morley v Carter* [1898] 1 QB 8, where the tenancy was held to have terminated in respect of each part as it was given up; and see *Re Paul, ex*

*p Earl of Portarlington* (1889) 24 QBD 247, where the tenancy was held to have terminated at the end of a customary period of holding over after notice to quit. As to the meaning of 'contract of tenancy' see PARA 325.

For these purposes 'term date' means, in relation to a tenancy granted for a term of years, the date fixed for the expiry of that term: ss 3(4), 4(4).

2 The provisions described in the text and notes 3-7 do not apply to tenancies falling within the Law of Property Act 1925 s 149(6) (lease for life or lives or for a term determinable with life or lives or on the marriage of, or formation of a civil partnership by, the lessee: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 240): Agricultural Holdings Act 1986 s 3(3).

3 As to the meaning of 'agricultural holding' see PARA 323.

4 Any notice, request, demand or other instrument under the Agricultural Holdings Act 1986 is duly given to or served on the person to or on whom it is to be given or served if it is delivered to him or left at his proper address or sent in a registered letter or by recorded delivery: s 93(1). It is duly given to or served on an incorporated company or body if it is given to or served on the secretary or clerk: s 93(2). Where an agent or servant is responsible for the management or farming of the holding, service by or to (as the case may be) that servant or agent is due service: s 93(3). Where a tenant has not received notice of a change of landlord and of the name and address of the new landlord, he makes due service if he serves a notice on the original landlord: s 93(4). Unless or until the tenant of an agricultural holding has received notice that the person who before that time was entitled to receive the rents and profits of the holding (the 'original landlord') has ceased to be so entitled and notice of the name and address of the person who has become entitled to receive the rents and profits, any notice or other document served upon or delivered to the original landlord by the tenant is deemed for the purposes of the Agricultural Holdings Act 1986 to have been served upon or delivered to the landlord of the holding: s 93(5). Service on an erstwhile agent of the original but past landlord is not valid service under s 93(5): see *Lodgepower Ltd v Taylor* [2004] EWCA Civ 1367, [2005] 1 EGLR 1, [2005] 08 EG 192. The 'proper address' of any person is, in the case of the secretary or clerk of an incorporated body, the registered or principal office and, in any other case, the last known address of the person in question: Agricultural Holdings Act 1986 s 93(4). As to the meaning of 'landlord' see PARA 323 note 7. As to the meaning of 'tenant' see PARA 323 note 5.

5 Agricultural Holdings Act 1986 s 3(1)(a).

6 Agricultural Holdings Act 1986 ss 3(1)(b), 4(1). As to the death of a tenant see the text and notes 11-17.

7 Agricultural Holdings Act 1986 s 3(2). Thus s 26 (restriction on operation of notice to quit: see PARA 374) and s 60 (compensation for disturbance: see PARAS 447-448) will apply. As to notices to quit see PARAS 373-399.

8 As to the meaning of 'agreement' see PARA 325 note 1.

9 As to the Secretary of State and the Welsh Ministers see PARA 643.

10 Agricultural Holdings Act 1986 s 5. As to contracting out generally see *Johnson v Moreton* [1980] AC 37, [1978] 3 All ER 37, HL; *Featherstone v Staples* [1986] 2 All ER 461, [1986] 1 WLR 861, CA; *Elsden v Pick* [1980] 3 All ER 235, [1980] 1 WLR 898, CA; *Sparkes v Smart* [1990] 2 EGLR 245. There is no comparable provision in respect of the Agricultural Holdings Act 1986 s 2 (see PARA 327) but given the requirement that the exclusion of s 2 has to be approved by the Secretary of State or the Welsh Ministers, it is likely that it is not possible to contract out therefrom.

11 I.e. the date on which the Agricultural Holdings Act 1948 s 3A (repealed), from which the Agricultural Holdings Act 1986 s 4 derives, came into force.

12 As to the term date see note 1.

13 Agricultural Holdings Act 1986 s 4(1), (2).

14 Agricultural Holdings Act 1986 s 4(2)(a).

15 Agricultural Holdings Act 1986 s 4(2)(b).

16 See the Agricultural Holdings Act 1986 s 60; and PARAS 447-448.

17 Agricultural Holdings Act 1986 s 4(3).

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### **329. Sub-tenancies.**

There is a power to extend the statutory provisions conferring security of tenure on tenants of agricultural holdings to protect agricultural sub-tenants against the head landlord should the mesne tenancy be determined<sup>1</sup>.

While the head tenancy endures the sub-tenant enjoys the same security of tenure and benefits and burdens of an agricultural holding as any other tenant; sub-tenants are not protected on the termination of the superior interest of the head tenant by the head landlord<sup>2</sup> even if the head tenant determines his own tenancy, for example by giving notice to quit or surrendering<sup>3</sup>.

1 See the Agricultural Holdings Act 1986 s 29, Sch 4 paras 6, 7; and PARA 399. At the date at which this volume states the law this power had not been exercised. As to the meaning of 'agricultural holding' see PARA 323.

2 *Mellor v Watkins* (1874) LR 9 QB 400; *Brown v Wilson* (1949) 208 LT 144.

3 See *Pennell v Payne* [1995] QB 192, [1995] 2 All ER 592 (overruling *Brown v Wilson* (1949) 208 LT 144). See also the Law of Property Act 1925 s 139; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 638, 641. In *Barrett v Morgan* [2000] 2 AC 264, [2000] 1 All ER 481, HL, a sub-tenancy was determined when the head tenant did not serve a counter-notice after receipt of a notice to quit from the head landlord even though there had been an agreement by the head tenant with his landlord that no counter-notice would be served. Cf *Gisborne v Burton* [1989] QB 390, [1988] 3 All ER 760, CA, where the court gave protection to the sub-tenant because the sub-tenancy was a sham granted deliberately to avoid the security provisions of the Agricultural Holdings Act 1986.

As to the service of notices see PARA 328 note 4.

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## **(iv) Terms of the Tenancy**

### **A. IN GENERAL**

#### **330. Right to a written tenancy agreement.**

Where in respect of a tenancy of an agricultural holding<sup>1</sup> there is not in force a written agreement<sup>2</sup> embodying all the terms of the tenancy (including any model clauses)<sup>3</sup>, or there is such an agreement but it omits any of the matters specified below<sup>4</sup>, the landlord<sup>5</sup> or tenant<sup>6</sup> may refer the terms of the tenancy to arbitration; it is a condition precedent that either party has requested the other to enter into an agreement in writing embodying all the terms of the tenancy and containing provision for all the specified matters, and no such agreement has been reached<sup>7</sup>.

The specified matters are:

- 59 (1) the names of the parties<sup>8</sup>;

- 60 (2) particulars of the holding with sufficient description (by reference to a map or plan) to identify its extent<sup>9</sup>;
- 61 (3) the term or terms for which the holding or different parts of it is or are agreed to be let<sup>10</sup>;
- 62 (4) the rent reserved and the dates on which it is payable<sup>11</sup>;
- 63 (5) the incidence of liability for rates (including drainage rates)<sup>12</sup>;
- 64 (6) a covenant by the tenant in the event of the destruction by fire of harvested crops grown on the holding for consumption on it to return to the holding the full equivalent manorial value of the crops destroyed, in so far as the return of that value is required for the fulfilment of his responsibilities to farm in accordance with the rules of good husbandry<sup>13</sup>;
- 65 (7) a covenant by the tenant to insure against damage by fire all dead stock and harvested crops grown on the holding for consumption on it<sup>14</sup>;
- 66 (8) a power for the landlord to re-enter on the holding on the non-performance of obligations by the tenant<sup>15</sup>; and
- 67 (9) a covenant by the tenant not to assign, sub-let or part with possession of the holding or any part of it without the landlord's written consent<sup>16</sup>.

The role of the arbitrator is to determine the existing terms of the tenancy subject to any variations agreed between landlord and tenant<sup>17</sup>. In so far as these terms do not make provision for or are inconsistent with the matters specified in heads (1) to (9) above, the arbitrator must include them in his award in a way that is reasonable and just between landlord and tenant<sup>18</sup>. He may also include any further provision relating to the tenancy agreed between landlord and tenant<sup>19</sup>. He may also vary the rent if it appears to him that it is equitable to do so by reason of any provision which he is required to include in his award<sup>20</sup>.

Where the arbitrator makes an award, that award takes effect as if the terms and provisions specified therein were contained in a written agreement between landlord and tenant; it has effect as from the date of the award or as from such later date as may be specified in it<sup>21</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323.

2 As to the meaning of 'agreement' see PARA 325 note 1. A tenancy of agricultural land may be created orally if it takes effect in possession for a term not exceeding three years and is at the best rent which can reasonably be obtained without taking a fine: see the Law of Property Act 1925 s 54(2); and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 101. The fact that a tenancy may last longer than three years, as may, for example, a tenancy from year to year, does not make it a tenancy for a term exceeding three years: *Re Knight, ex p Voisey* (1882) 21 ChD 442, CA; *Kushner v Law Society* [1952] 1 KB 264 at 274, [1952] 1 All ER 404 at 407, DC, per Lord Goodard CJ.

3 Agricultural Holdings Act 1986 s 6(1)(a). As to the model clauses see s 7; and PARA 332.

4 Agricultural Holdings Act 1986 s 6(1)(b).

5 As to the meaning of 'landlord' see PARA 323 note 7.

6 As to the meaning of 'tenant' see PARA 323 note 5.

7 Agricultural Holdings Act 1986 s 6(1).

8 Agricultural Holdings Act 1986 Sch 1 para 1.

9 Agricultural Holdings Act 1986 Sch 1 para 2.

10 Agricultural Holdings Act 1986 Sch 1 para 3.

11 Agricultural Holdings Act 1986 Sch 1 para 4.

12 Agricultural Holdings Act 1986 Sch 1 para 5.

13 Agricultural Holdings Act 1986 Sch 1 para 6. The Agriculture Act 1947 ss 10, 11 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904) (which specify the circumstances in which an owner of agricultural land is deemed for the purposes of that Act to fulfil his responsibilities to manage the land in accordance with the rules of good estate management and an occupier of such land is deemed for those purposes to fulfil his responsibilities to farm it in accordance with the rules of good husbandry) apply for the purposes of the Agricultural Holdings Act 1986: s 96(3).

14 Agricultural Holdings Act 1986 Sch 1 para 7. This requirement does not apply where the interest of the tenant is held by a government department or where the tenant has made provision, approved by the Secretary of State or the Welsh Ministers, in lieu of such insurance: Sch 1 para 7. As to the Secretary of State and the Welsh Ministers see PARA 643.

15 Agricultural Holdings Act 1986 Sch 1 para 8. See also *Parry v Million Pigs Ltd* (1980) 260 Estates Gazette 281.

16 Agricultural Holdings Act 1986 Sch 1 para 9. If the terms of the tenancy do not include such a covenant and the landlord has requested the tenant to enter into a full written tenancy agreement, then the tenant may not assign, sub-let or part with possession of the holding or any part of it pending the determination of the terms of the tenancy (such period being the period beginning with the date of service of the landlord's request on the tenant and ending with the date on which an agreement is concluded in accordance with that request or (as the case may be) with the date on which the award of an arbitrator on a reference under s 6 relating to the tenancy takes effect), and any such transaction in those circumstances is void: s 6(5), (6).

17 Agricultural Holdings Act 1986 s 6(2)(a). As to arbitration generally see PARA 469 et seq.

18 Agricultural Holdings Act 1986 s 6(2)(b).

19 Agricultural Holdings Act 1986 s 6(2)(c).

20 Agricultural Holdings Act 1986 s 6(3).

21 Agricultural Holdings Act 1986 s 6(4).

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### **331. Stipulation for additional rent or penalties.**

It was once common in agricultural leases for the tenant to covenant not to do certain acts, with a stipulation that if he did them he would pay an additional rent, or a sum of money<sup>1</sup>. In connection with tenancies governed by the Agricultural Holdings Act 1986, however, it is provided that notwithstanding any provision in a contract of tenancy<sup>2</sup> of an agricultural holding<sup>3</sup> making the tenant<sup>4</sup> liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of a term or condition in the contract, a landlord<sup>5</sup> is not entitled to recover<sup>6</sup> any sum in consequence of any breach or non-fulfilment of any such term or condition in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment<sup>7</sup>.

1 See eg *Legh v Lillie* (1860) 6 H & N 165, where there was a covenant not to remove manure except on payment of an increased rent. It was held not to be an answer to a breach of covenant that the tenant had brought on to the premises a quantity of manure larger and better in quality than that removed.

2 As to the meaning of 'contract of tenancy' see PARA 325.

3 As to the meaning of 'agricultural holding' see PARA 323.

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 As to the meaning of 'landlord' see PARA 323 note 7.

6 Until a day to be appointed the Agricultural Holdings Act 1986 s 24 specifies that the landlord's disentitlement to recover refers to recovery 'by distress or otherwise'; as from that day the method of recovery to which the landlord is not entitled is no longer specified: s 24 (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 paras 41, 43, Sch 23 Pt 4). At the date at which this volume states the law no such day had been appointed.

7 Agricultural Holdings Act 1986 s 24 (prospectively amended: see note 6).

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## ***B FIXTURES, FITTINGS AND BUILDINGS***

### **332. The model clauses.**

The Secretary of State and the Welsh Ministers<sup>1</sup> are empowered, after consultation with bodies appearing to represent the interests of landlords<sup>2</sup> and tenants<sup>3</sup> of agricultural holdings<sup>4</sup>, to make regulations<sup>5</sup> prescribing terms as to the maintenance, repair and insurance of fixed equipment<sup>6</sup>; such terms are known as the 'model clauses'<sup>7</sup>. The model clauses are deemed to be part of every tenancy agreement except in so far as they would impose on one of the parties to an agreement in writing a liability which under the agreement is imposed on the other<sup>8</sup>. If the terms of the written agreement release a party from an obligation to maintain, repair or insure under the model clauses without imposing the liability on the other party, the regulations, while being incorporated, are of no effect because the contractual terms prevail over the model clauses<sup>9</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 As to the meaning of 'agricultural holding' see PARA 323.

5 The regulations may provide for the determination by arbitration of any matter arising from them: Agricultural Holdings Act 1986 s 7(2). The regulations currently in force are the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473: see PARA 333.

Any power to make an order or regulations conferred by any provision of the Agricultural Holdings Act 1986 (except s 85 or s 86 (see PARAS 474-477)) is exercisable by statutory instrument: s 94(1). Any statutory instrument containing an order or regulations made under any provision of the Agricultural Holdings Act 1986 (except s 84(4) (see PARA 473) or s 91 (see PARA 431)) is subject to annulment in pursuance of a resolution of either House of Parliament: s 94(2) (s 94(2), (3) amended by SI 2006/2805). No regulations may be made under the Agricultural Holdings Act 1986 s 22(4) (see PARA 349) or s 84(4) (see PARA 473) unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament: s 94(3) (as so amended). An order made under s 91 (see PARA 431) is of no effect unless approved by a resolution of each House of Parliament: s 94(4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers under these provisions before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 'Fixed equipment' includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity: Agricultural Holdings Act 1986 s 96(1). 'Building' includes any part of a building: s 96(1).

7 Agricultural Holdings Act 1986 s 7(1).

8 Agricultural Holdings Act 1986 s 7(3).

9 *Burden v Hannaford* [1956] 1 QB 142, [1955] 3 All ER 401, CA.

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### **333. Obligations of parties.**

Under the regulations relating to fixed equipment<sup>1</sup> the landlord is, in general, made responsible for executing all repairs and replacements to the main and exterior walls, and the roofs, floors, doors and windows, of the farmhouse and cottages, and to the water supply and sewage disposal systems<sup>2</sup>, for insuring the farmhouse, cottages and farm buildings against fire and making good damage by fire<sup>3</sup>, and for painting, gas-tarring, or creosoting exterior wood and ironwork and the interior steelwork of open-sided buildings<sup>4</sup>. In so far as the responsibility is not placed on the landlord, the tenant is in general responsible for repairing and leaving clean and in good tenantable repair, order and condition the farmhouse, cottages and farm buildings, together with all fixtures and fittings, drains, sewers, water supplies, fences, hedges, ditches, field walls, gates, cattle grids, bridges, ponds, watercourses, roads, yards and similar items, for cleaning and keeping in good working order roof valleys, gutters and down pipes, for the repair or replacement of covers to manholes, inspection chambers and sewage disposal systems and for reporting damage to items for which the landlord is responsible<sup>5</sup>. He must also replace or repair all items of fixed equipment and do any work when the replacement, repair or work is rendered necessary by his own wilful act or negligence or that of members of his household or of his employees<sup>6</sup>. It is his responsibility to clean, whiten, paint, paper, colour or limewash, as appropriate, the interior of the buildings<sup>7</sup>, to execute minor roof repairs<sup>8</sup> and to maintain hedges<sup>9</sup>, and to dig out, scour and cleanse ponds, watercourses and ditches<sup>10</sup>.

Provision is made for the recovery of half the reasonable cost incurred by the landlord in carrying out certain of the works for which he is responsible<sup>11</sup>, for the recovery of a due proportion of the cost of painting, papering and similar work attributable to the period of the tenancy where the last year of the tenancy is not a year in which such work is to be carried out<sup>12</sup>, and for the recovery of the costs of repairs or replacements which are the responsibility of the landlord but have been carried out by the tenant<sup>13</sup>.

Where either the landlord or the tenant fails to execute the repairs for which he is liable, the tenant or the landlord, as the case may be, has the right, after making a written request and after specified periods have elapsed, to perform the repairs and recover the cost from the other party<sup>14</sup>.

No responsibility is created in respect of obsolete items of fixed equipment for which the parties have agreed that neither is to be liable<sup>15</sup>, or in respect of the execution of works rendered impossible, except at prohibitive or unreasonable cost, by reason of the subsidence of any land or by the blocking of outfalls which are not under the control of either the landlord or the tenant<sup>16</sup>.

Provision is made for the determination by arbitration, in default of agreement, of any claim, question or difference arising under the regulations<sup>17</sup>.

1 The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473 (amended by SI 1988/281). See PARA 332.



- 2 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 1. In certain cases of repair or replacement the landlord may recover half of the reasonable cost from the tenant (see the text and notes 11-13).
- 3 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 2.
- 4 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 3. In certain cases the landlord may recover a proportion of the reasonable cost from the tenant (see the text and notes 11-13).
- 5 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 5. This obligation is not limited to the preservation of such state of repair and cleanliness as existed at the beginning of the tenancy: see *Evans v Jones* [1955] 2 QB 58, [1955] 2 All ER 118, CA.
- 6 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule paras 4(1), 6.
- 7 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 7.
- 8 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 8 (substituted by SI 1988/281).
- 9 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 9.
- 10 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 10.
- 11 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule paras 1(1), 3. The works must be executed before the landlord can claim: see *Robertson-Ackerman v George* (1953) 103 Ljo 496, County Court.
- 12 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 11.
- 13 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 12 (substituted by SI 1988/281).
- 14 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule paras 4, 12 (Schedule para 12 as substituted; see note 13). As to the restriction on the cost of replacements see also *Grayless v Watkinson* [1990] 1 EGLR 6, [1990] 21 EG 163, CA. As to the landlord's power to enter on to the premises in order to do work which is the tenant's responsibility see the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 4(2); and see also the Agricultural Holdings Act 1986 s 23 (landlord's power of entry); and PARA 350. See also *Hammond v Allen* [1994] 1 All ER 307, 65 P & CR 18 (counter-notice must be served within the period stipulated; time is of the essence.)
- 15 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 14(1). As to a determination that any item of fixed equipment is, or before damage or destruction by fire was, redundant to the holding see Schedule para 13.
- 16 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 14(2).
- 17 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 15. For a discussion on the effect of the arbitration provisions see *Tustian v Johnson* [1993] 2 All ER 673. As to arbitrations generally see PARA 469 et seq.

AGRICULTURAL HOLDINGS ACT 1986/(iv) Terms of the Tenancy/B FIXTURES, FITTINGS AND BUILDINGS/334. Variation of written agreement.

### **334. Variation of written agreement.**

Where there is a written tenancy agreement which effects substantial modifications to the model clauses<sup>1</sup>, the landlord<sup>2</sup> or the tenant<sup>3</sup> may refer the terms of the tenancy to arbitration<sup>4</sup>. It is a condition precedent that the party seeking arbitration has previously requested the other party to vary the terms in order to bring them into conformity with the model clauses and no agreement has been reached<sup>5</sup>. On such a reference the arbitrator must consider whether, disregarding the rent, the terms are justifiable having regard to the circumstances of the holding and of the landlord and tenant; if he determines that they are not so justifiable, he may vary them as appears just and reasonable between the parties<sup>6</sup>. He may vary the rent if it appears equitable to do so by reason of any provision included in his award<sup>7</sup>. An award by the arbitrator has effect as if the terms and provisions contained in it were contained in a written agreement between the landlord and tenant; it takes effect from the date of the making of the award or from such later date as may be specified<sup>8</sup>.

1 As to the model clauses see PARA 332.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Agricultural Holdings Act 1986 s 8(1), (2). As to arbitrations generally see PARA 469 et seq. Where there has been a reference under s 8 relating to a tenancy, no further such reference relating to that tenancy may be made before the expiry of three years from the coming into effect of the award of the arbitrator on the previous reference: s 8(6).

5 Agricultural Holdings Act 1986 s 8(2). As to the meaning of 'agreement' see PARA 325 note 1.

6 Agricultural Holdings Act 1986 s 8(3).

7 Agricultural Holdings Act 1986 s 8(4). See also Sch 2 para 4(1)(b), (2)(b), under which the general rule that a reference to arbitration may not be made in respect of an increase or reduction in rent within three years of a previous increase or reduction is excluded in relation to a variation of rent consequent upon an award concerning the model clauses under the provisions described above.

8 Agricultural Holdings Act 1986 s 8(5).

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### **335. Compensation and adjustment of rent on transfer of liability for fixed equipment.**

Where liability for the maintenance or repair of any item of fixed equipment<sup>1</sup> is transferred from the tenant<sup>2</sup> to the landlord<sup>3</sup>, whether by virtue of a written agreement made by an arbitrator<sup>4</sup> or of an award of an arbitrator bringing a written agreement into accord with the regulations<sup>5</sup>, or by virtue of the operation of the model clauses<sup>6</sup>, the landlord may require determination by arbitration, and payment by the tenant of the relevant compensation<sup>7</sup>. Where the transfer is from landlord to tenant, any claim by the tenant in respect of the landlord's previous failure to

discharge the liability must, if the tenant so requires, be determined by arbitration<sup>8</sup>. In either case the application must be made within one month from the date on which the transfer of liability took effect<sup>9</sup>. Where the terms of a tenancy as to maintenance, repair or insurance of fixed equipment are varied by new regulations made in respect of the model clauses<sup>10</sup>, and a reference is made to arbitration regarding a written tenancy agreement<sup>11</sup> within the prescribed period after the coming into force of the new regulations, the arbitrator must disregard the variation for the purposes of the reference<sup>12</sup>.

1 As to the meaning of 'fixed equipment' see PARA 332 note 6.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 As to the securing of written tenancy agreements by reference to arbitration see the Agricultural Holdings Act 1986 s 6; and PARA 330.

5 See the Agricultural Holdings Act 1986 s 8; and PARA 334. As to the meaning of 'agreement' see PARA 325 note 1.

6 As to the model clauses see the Agricultural Holdings Act 1986 s 7; and PARA 332.

7 Agricultural Holdings Act 1986 s 9(1). 'Relevant compensation' means compensation which would have been payable in respect of deterioration, dilapidation or damage under s 71 (whether recoverable as a statutory right or under a written contract of tenancy) (see PARAS 456-458), in respect of any previous failure by the tenant to discharge the liability transferred to the landlord under s 9(1), if the tenant had quitted the holding on the termination of his tenancy at the date of transfer: s 9(2).

Outstanding liabilities may be substantial (see *Payne v Haine* (1847) 16 M & W 541; *Proudfoot v Hart* (1890) 25 QBD 42, CA), but to some extent mitigated by the principle in *Evans v Jones* [1955] 2 QB 58, [1955] 2 All ER 118, CA, that in determining whether a tenant had complied with his obligation to repair or maintain any item, regard should be had to its age, character and condition at the beginning of the tenancy, and to the length of the tenancy.

8 Agricultural Holdings Act 1986 s 9(3). As to arbitrations generally see PARA 469 et seq.

9 Agriculture (Miscellaneous Time-Limits) Regulations 1959, SI 1959/171, reg 2(2), (3).

10 See PARA 332.

11 See PARA 330.

12 Agricultural Holdings Act 1986 s 9(4). The 'prescribed period' for these purposes is a period prescribed on each occasion of the variation of the regulations. The regulations in question are the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473 (see PARA 333).

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### **336. Tenant's right to remove fixtures and buildings.**

In general, any engine, machinery, fencing or other fixture affixed to an agricultural holding<sup>1</sup> by the tenant<sup>2</sup>, whether for the purposes of agriculture<sup>3</sup> or not<sup>4</sup>, and any building<sup>5</sup> erected by him on the holding<sup>6</sup>, is removable by him at any time during the continuance of the tenancy or within two months after its termination<sup>7</sup>, and remains his property so long as he is entitled to remove it<sup>8</sup>. This applies equally to fixtures and buildings acquired, rather than affixed or erected, by the tenant<sup>9</sup>. The right is exercisable only if the tenant has paid all the rent and

abided by the other terms of the tenancy agreement<sup>10</sup> and at least one month before both the exercise of the right and the termination of the tenancy he has given the landlord written notice of his intention to remove the fixture or building<sup>11</sup>. A tenant who removes a fixture without giving notice to the landlord of his intention to remove cannot afterwards claim for expenses or loss suffered through the removal as compensation for disturbance<sup>12</sup>. The landlord may give a counter-notice to the tenant electing to purchase the fixture or building, and in that case the landlord is liable to pay to the tenant the fair value of the fixture or building to an incoming tenant, and the right to remove the fixture or building is thereby extinguished<sup>13</sup>. In exercising a right of removal the tenant must not do any avoidable damage, and must immediately thereafter make good all damage so done which has been occasioned by the removal<sup>14</sup>.

To the common law rule that whatever is affixed by the tenant to the freehold becomes the property of the owner of the freehold and cannot be severed by the tenant either during the continuance or after the determination of the term, exceptions have been admitted by the courts in respect of fixtures erected by a tenant for the purposes of mere ornament or convenience or for the purposes of trade<sup>15</sup>. The exception in favour of trade fixtures has not, however, been extended by the courts to fixtures erected for agricultural purposes<sup>16</sup>, although it does apply to fixtures of certain trades with a strongly agricultural flavour, such as market gardens or the business of a nurseryman, for example greenhouses, cider mills and even trees and shrubs planted by a nurseryman for sale<sup>17</sup>.

The right of an agricultural tenant to remove Dutch barns<sup>18</sup> and barns resting on the soil which have sunk into the soil by their own weight<sup>19</sup>, or placed upon staddles<sup>20</sup>, has been recognised on the ground that such structures are not fixtures, it being necessary to constitute a fixture that the soil should have been displaced for the purpose of receiving the article, or that the chattel should have been cemented or otherwise fastened to some fabric previously attached to the ground<sup>21</sup>.

A market gardener or nurseryman has, however, been held to be entitled to remove greenhouses and hothouses erected for the purposes of his business<sup>22</sup>, and shrubs and trees, or such as are likely to become trees, planted with a view to sale<sup>23</sup>, but not orchard trees<sup>24</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323. Tenants of market gardens are given additional rights in respect of improvements: see the Agricultural Holdings Act 1986 ss 79-81; and PARA 464 et seq. Note the right to require a record to be made under s 22(1)(b): see PARA 349. As to the parties' ability to contract out see *Johnson v Moreton* [1980] AC 37, [1978] 3 All ER 37, HL; and PARA 328.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'agriculture' see PARA 324.

4 Agricultural Holdings Act 1986 s 10(1)(a).

5 As to the meaning of 'building' see PARA 332 note 6.

6 Agricultural Holdings Act 1986 s 10(1)(b).

7 As to the termination of an agricultural tenancy see PARA 328 note 1.

8 Agricultural Holdings Act 1986 s 10(1). This provision does not apply to:

19 (1) a fixture or building affixed or erected in pursuance of some obligation (s 10(2)(a));

20 (2) a fixture or building affixed or erected instead of some fixture or building belonging to the landlord (s 10(2)(b));

21 (3) a building in respect of which the tenant is entitled to compensation (s 10(2)(c));

22 (4) a fixture or building affixed or erected before 1 January 1884 (s 10(2)(d)); or

23 (5) a fixture or building acquired by the tenant before 1 January 1901 (Sch 12 para 3).

As to the meaning of 'landlord' see PARA 323 note 7. The dates mentioned above are the dates on which the Agricultural Holdings (England) Act 1883 and the Agricultural Holdings Act 1900, from which these provisions in part derive, were respectively brought into force.

9 Agricultural Holdings Act 1986 s 10(7). No right of removal that subsists otherwise than by virtue of s 10 is prejudiced by the operation thereof: s 10(8).

10 Agricultural Holdings Act 1986 s 10(3)(a).

11 Agricultural Holdings Act 1986 s 10(3)(b). As to the service of notices see PARA 328 note 4.

12 *Re Harvey and Mann* (1920) 89 LJB 687, CA.

13 Agricultural Holdings Act 1986 s 10(4). Any dispute as to the amount payable by the landlord in this case must be determined by arbitration: s 10(6). As to arbitrations generally see PARA 469 et seq.

14 Agricultural Holdings Act 1986 s 10(5).

15 See further **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 180.

16 *Elwes v Maw* (1802) 3 East 38.

17 *Penton v Robart* (1801) 2 East 88; *Oakley v Monck* (1866) LR 1 Exch 159; *Mears v Callender* [1901] 2 Ch 388; *Wardell v Usher* (1841) 3 Scott NR 508.

18 *Dean v Allalley* (1799) 3 Esp 11.

19 *Culling v Tufnal* (1694) Bull NP (5th Edn) 34; *Wansbrough v Maton* (1836) 4 Ad & El 884.

20 *Wiltshear v Cottrell* (1853) 1 E & B 674.

21 *Turner v Cameron* (1870) LR 5 QB 306 at 311. The traditional distinction between chattels and fixtures is re-stated in *Elitestone Ltd v Morris* [1997] 2 All ER 513, [1997] 1 WLR 687, HL.

22 *Penton v Robart* (1801) 2 East 88; *Mears v Callender* [1901] 2 Ch 388.

23 *Penton v Robart* (1801) 2 East 88; *Oakley v Monck* (1866) LR 1 Exch 159.

24 *Mears v Callender* [1901] 2 Ch 388.

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### **337. Provision of fixed equipment.**

If the agricultural land tribunal<sup>1</sup> is satisfied, on the application by the tenant<sup>2</sup> of an agricultural holding<sup>3</sup>, as to the matters mentioned below, it may direct the landlord<sup>4</sup> to carry out, within a period specified in the direction, such work for the provision, alteration or repair of fixed equipment<sup>5</sup> as will enable the tenant to comply with requirements imposed by or under any enactment<sup>6</sup>.

Before making such a direction the tribunal must be satisfied that it is reasonable, having regard to the tenant's responsibilities to farm in accordance with the rules of good husbandry<sup>7</sup>, that the tenant should carry on on the holding an agricultural<sup>8</sup> activity specified in his application to the extent and in the manner so specified and:

- 68 (1) that, unless fixed equipment is provided on the holding, the tenant in so carrying out that activity will contravene requirements imposed by or under any enactment<sup>9</sup>; or
- 69 (2) that it is reasonable that he should use, for purposes connected with that activity, fixed equipment already provided on the holding, but that, unless that equipment is altered or repaired, he would, in using it for those purposes, contravene those requirements<sup>10</sup>.

Where, however, it appears to the tribunal that an agricultural activity specified in the tenant's application has not been carried on on the holding for a period of at least three years immediately preceding the making of the application, it must not direct the landlord to carry out work in connection with that activity unless it is satisfied that the starting of the activity did not, or, if it has not already been started, will not, constitute or form part of a substantial alteration of the type of farming carried on on the holding<sup>11</sup>. Further, the tribunal must not so direct the landlord to carry out work unless it is satisfied that it is reasonable to do so having regard to:

- 70 (a) the landlord's responsibilities to manage the land in accordance with the rules of good estate management<sup>12</sup>;
- 71 (b) the period for which the holding may be expected to remain separate<sup>13</sup>; and
- 72 (c) any other material consideration<sup>14</sup>,

and that the landlord has refused to carry out the work on the tenant's written request or has not agreed to carry it out within a reasonable time after that request<sup>15</sup>.

The tribunal must not in any case make a direction if the contract of tenancy<sup>16</sup> or any other agreement between the landlord and tenant provides for the carrying out of the work by the landlord or tenant, or if the landlord must carry it out in order to comply with a requirement imposed on him by or under any enactment<sup>17</sup>. On a failure by the landlord to comply with the tribunal's direction, the tenant has the same remedies as if the contract of tenancy had contained an undertaking by the landlord to carry out the work directed within the period specified<sup>18</sup>, and notwithstanding any term in the contract of tenancy restricting the carrying out of alterations by the tenant, those remedies include the right to carry out the work himself and recover the reasonable cost from the landlord<sup>19</sup>. The tribunal may, on the landlord's application, extend or further extend the time for compliance with a direction, if satisfied that such an extension is required to allow sufficient time both for the completion of any necessary or desirable preliminary arrangements (including the determination of any application by the landlord for a grant in respect of the work) and for the carrying out of the work<sup>20</sup>. The landlord may obtain an increase of rent in respect of an improvement carried out in compliance with a direction of the tribunal as if it were carried out at the request of the tenant<sup>21</sup>.

1 As to agricultural land tribunals see PARAS 670-673.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'agricultural holding' see PARA 323.

4 As to the meaning of 'landlord' see PARA 323 note 7.

5 As to the meaning of 'fixed equipment' see PARA 332 note 6.

6 Agricultural Holdings Act 1986 s 11(1).

7 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

- 8 As to the meaning of 'agricultural' see PARA 324.
- 9 Agricultural Holdings Act 1986 s 11(1)(a).
- 10 Agricultural Holdings Act 1986 s 11(1)(b).
- 11 Agricultural Holdings Act 1986 s 11(2).
- 12 Agricultural Holdings Act 1986 s 11(3)(a). As to the rules of good estate management see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.
- 13 Agricultural Holdings Act 1986 s 11(3)(a).
- 14 Agricultural Holdings Act 1986 s 11(3)(a).
- 15 Agricultural Holdings Act 1986 s 11(3)(b).
- 16 As to the meaning of 'contract of tenancy' see PARA 325.
- 17 Agricultural Holdings Act 1986 s 11(4).
- 18 Agricultural Holdings Act 1986 s 11(5).
- 19 Agricultural Holdings Act 1986 s 11(6). If the tenant receives any grant out of money provided by Parliament in respect of the work, the reasonable cost is reduced by the amount of the grant: s 11(8).
- 20 Agricultural Holdings Act 1986 s 11(7).
- 21 See the Agricultural Holdings Act 1986 s 13; and PARA 340.

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### ***C. DETERMINATION OF RENT***

#### **338. Arbitration on rent.**

The landlord<sup>1</sup> or tenant<sup>2</sup> of an agricultural holding<sup>3</sup> may by notice in writing served on the other party<sup>4</sup> demand that the rent to be payable for the holding as from the next termination date<sup>5</sup> should be referred to arbitration<sup>6</sup>. On such a reference the arbitrator must determine what rent should be properly payable in respect of the holding at the next termination date following the date of the demand for arbitration and accordingly must, with effect from that next termination date, increase or reduce the rent previously payable or direct that it continue unchanged<sup>7</sup>. A demand for arbitration ceases to be effective on the next termination date following the date of the demand unless before that termination date an arbitrator has been appointed by agreement between the parties<sup>8</sup> or an application has been made to the President of the Royal Institution of Chartered Surveyors<sup>9</sup> for the appointment of an arbitrator by him<sup>10</sup>.

For the purpose of such a reference the rent properly payable is that at which, having regard to the terms of the tenancy other than those relating to rent, the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant, taking into account all relevant factors<sup>11</sup>, including the terms of the tenancy (including those relating to rent), the character and situation of the holding (including the locality in which it is situated), the productive capacity<sup>12</sup> of the holding and its related earning capacity<sup>13</sup> and the current level of rents for comparable lettings<sup>14</sup>. The rent must be assessed for the holding and such assessment is not restricted to the rent referable to pure agricultural activity<sup>15</sup>. On such a

reference the arbitrator must disregard any effect on the rent of the fact that the tenant who is a party to the arbitration is in occupation of the holding<sup>16</sup> and any increase in the rental value of the holding which is due to tenant's improvements<sup>17</sup> or fixed equipment<sup>18</sup> other than those executed or provided under an obligation imposed on the tenant by the terms of his contract of tenancy<sup>19</sup>. The arbitrator must also disregard any increase in rental value due to improvements executed by the landlord, in so far as the landlord has received or will receive grants out of money provided by Parliament or local government funds<sup>20</sup> in respect thereof<sup>21</sup>. In certain cases the arbitrator must also disregard any increase in the rental value of land which comprises or is part of a holding to which a dairy produce quota is transferred<sup>22</sup>. The arbitrator must not fix the rent at a lower amount by reason of any dilapidation or deterioration of, or damage to, buildings or land caused or permitted by the tenant<sup>23</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7. A landlord may serve a notice under these provisions without prejudice to his separate claim that no tenancy actually exists: see *Grammer v Lane* [2000] 2 All ER 245, [2000] 1 EGLR 1, CA.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'agricultural holding' see PARA 323.

4 As to the service of notices see PARA 328 note 4.

5 The 'next termination date' following the date of the demand is the next day following the date of the demand on which the tenancy of the holding could be determined by notice to quit given at the date of the demand: Agricultural Holdings Act 1986 s 12(4).

6 Agricultural Holdings Act 1986 s 12(1). The demand must be worded to accord with this provision: *White v Morley* [1932] EGD 166. As to arbitrations generally see PARA 469 et seq.

7 Agricultural Holdings Act 1986 s 12(2) (amended by SI 2006/2805). As to the circumstances in which increases in rent may be made on account of improvements see PARA 340. See also *University College, Oxford v Durdy* [1982] Ch 413, [1982] 1 All ER 1108, CA (date of reference to arbitration was date of arbitrator's appointment).

8 Agricultural Holdings Act 1986 s 12(3)(a). As to when an application is deemed to have been made on time see *Thompson v Bradley* (30 November 2006, unreported).

9 As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

10 Agricultural Holdings Act 1986 s 12(3)(b).

11 Relevant factors include 'marriage value' in relation to the subject holding: *JW Childers Trustees v Anker* (1995) 73 P & CR 458, [1996] 1 EGLR 1, CA.

12 The 'productive capacity' of a holding means the productive capacity of the holding, taking into account fixtures and other available facilities, on the assumption that it is in the occupation of a competent tenant practising a system of farming which is suitable to the holding: Agricultural Holdings Act 1986 s 12(5), Sch 2 para 1(2)(a).

13 'Related earning capacity' means the extent to which, in the light of the productive capacity of a holding (see note 12), a competent tenant practising a suitable system of farming could reasonably be expected to profit from farming the holding: Agricultural Holdings Act 1986 Sch 2 para 1(2)(b).

14 Agricultural Holdings Act 1986 Sch 2 para 1(1). In determining the current level of rents for comparable lettings the arbitrator must take into account any available evidence as to rents which are, or in the case of rents currently being tendered are likely to become, payable in respect of tenancies of comparable agricultural holdings similar to those of the tenancy under consideration, but must disregard:

- 24 (1) any element of the rents compared which is due to an appreciable scarcity of comparable holdings (see *99 Bishopsgate Ltd v Prudential Assurance Co Ltd* (1984) 270 Estates Gazette 950, [1985] 1 EGLR 72, 273 Estates Gazette 984, CA (Agricultural Holdings Act 1986 Sch 2 para 1(3)(a)));



- 25 (2) any element which is due to the fact that the tenant of, or a person tendering for, any comparable holding, occupies land in the vicinity of the holding which may conveniently be occupied together with that holding (Sch 2 para 1(3)(b)); and
  - 26 (3) any effect on the rents due to any allowances or reductions made in consideration of the charging of premiums (Sch 2 para 1(3)(c)).
- 15 See *Tummon v Barclays Bank Trust Co Ltd* (1979) 39 P & CR 300, 250 Estates Gazette 980.
- 16 Agricultural Holdings Act 1986 Sch 2 para 3(a).
- 17 For these purposes 'tenant's improvements' are improvements executed wholly or partly at the expense of the tenant (whether or not such expense has been or will be reimbursed by a grant out of money provided by Parliament or local government funds), if the landlord has given no equivalent allowance or benefit in consideration of their execution: Agricultural Holdings Act 1986 Sch 2 para 2(2)(a). The continuous adoption by a tenant of a system of farming which is more beneficial to the holding than the system required by the contract of tenancy or, where there is no such requirement, than the system normally practised on comparable holdings, is deemed for this purpose to be an improvement executed at the tenant's expense: Sch 2 para 2(4).
- 18 As to the meaning of 'fixed equipment' see PARA 332 note 6.
- 19 Agricultural Holdings Act 1986 Sch 2 para 2(1)(a). As to the meaning of 'contract of tenancy' see PARA 325.
- 20 'Local government funds' means, in relation to any grant in respect of an improvement executed by the landlord or tenant of an agricultural holding, the funds of any body which, under or by virtue of any enactment, has power to make grants in respect of improvements of the description in question within any particular area (whether or not it is a local authority for that area): Agricultural Holdings Act 1986 s 96(1).
- 21 Agricultural Holdings Act 1986 Sch 2 para 2(1)(b).
- 22 Where there is a reference under the Agricultural Holdings Act 1986 s 12 in respect of land which comprises or is part of a holding in relation to which quota is registered under the Dairy Produce Quotas Regulations 2005, SI 2005/465 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 712 et seq) which was transferred to the tenant by virtue of a transaction the cost of which was borne wholly or partly by him, the arbitrator must (subject to any agreement between the landlord and tenant to the contrary) disregard:
- 27 (1) in a case where the land comprises the holding, any increase in the rental value of the land which is due to that quota (or, as the case may be, the corresponding part of that quota) (Agriculture Act 1986 s 15(1)(a)); or
  - 28 (2) in a case where the land is part of the holding, any increase in that value which is due to so much of that quota (or part) as would fall to be apportioned to the land under the Dairy Produce Quotas Regulations 2005, SI 2005/465 on a change of occupation of the land (Agriculture Act 1986 s 15(1)(b)).
- In determining for these purposes whether quota was transferred to a tenant by virtue of a transaction the cost of which was borne wholly or partly by him:
- 29 (a) any payment made by the tenant in consideration for the grant or assignment to him of the tenancy, or any previous tenancy of any land comprised in the holding, must be disregarded (s 15(2)(a));
  - 30 (b) any person who would be treated under Sch 1 para 2, 3 or 4 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 743-745) as having had quota transferred to him or having paid the whole or part of the cost of any transaction for the purposes of a claim under Sch 1 must be so treated for these purposes (s 15(2)(b)); and
  - 31 (c) any person who would be so treated under Sch 1 para 4, if a sub-tenancy to which his tenancy is subject had terminated, must be so treated for these purposes (s 15(2)(c)).
- As to the meanings of 'quota' and 'holding' see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 717 note 9, 720; as to the meaning of 'tenant' see PARA 323 note 5 (definitions applied by s 15(3)). The Agricultural Holdings Act 1986 s 95 (Crown land: see PARA 483) applies to these provisions as it applies to the provisions of the Agricultural Holdings Act 1986: Agriculture Act 1986 s 15(4).
- 23 Agricultural Holdings Act 1986 Sch 2 para 3(b).

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### 339. Frequency of arbitration.

Arbitration<sup>1</sup> may not be sought if the next termination date<sup>2</sup> following the date of the demand falls less than three years after the commencement of the tenancy<sup>3</sup>, the date as from which there took effect a previous increase or reduction of rent<sup>4</sup>, or the date as from which there took effect a previous direction of an arbitrator<sup>5</sup> that the rent should continue unchanged<sup>6</sup>. For this purpose there must be disregarded:

- 73 (1) any increase in rent awarded by an arbitrator on the drawing up of a written agreement<sup>7</sup> or on a reference concerning modifications to the model clauses<sup>8</sup>;
- 74 (2) any increase in rent attributable to the landlord's<sup>9</sup> improvements<sup>10</sup>, or any reduction of rent agreed between the landlord and tenant in consequence of any change in the fixed equipment<sup>11</sup> provided by the landlord<sup>12</sup>; and
- 75 (3) any reduction of rent on the giving of notice to quit part of a holding<sup>13</sup>.

Where the reversionary interest upon the termination<sup>14</sup> of the tenancy has been severed and the rent has been apportioned, the old tenancy is deemed to continue for the purpose of determining the frequency of arbitration<sup>15</sup>. If the parties agree to adjust the boundaries of the holding<sup>16</sup> or vary any other terms of the tenancy apart from rent, then unless the parties agree to the contrary this will not result in a new contract of tenancy<sup>17</sup> and any consequent variation in rent is also to be disregarded in determining the frequency of arbitration<sup>18</sup>.

1 As to arbitrations generally see PARA 469 et seq.

2 As to the meaning of 'next termination date' see PARA 338 note 5.

3 Agricultural Holdings Act 1986 Sch 2 para 4(1)(a). As to termination and regrant see *Jenkin R Lewis & Son Ltd v Kerman* [1971] Ch 477, [1970] 1 All ER 833; on appeal [1971] Ch 477, [1970] 3 All ER 414, CA.

If:

- 32 (1) a tenancy of an agricultural holding (the 'new tenancy') is granted to a person who, immediately before the grant of the new tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding (ie as determined by reference to either area or value), under a contract of tenancy (the 'previous tenancy') (Agricultural Holdings Act 1986 Sch 2 para 7(1)(a), (2) (Sch 2 para 7 added by SI 2006/2805));
- 33 (2) the Agricultural Holdings Act 1986 applies in relation to the new tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 301, 321) (Agricultural Holdings Act 1986 Sch 2 para 7(1)(b) (as so added)); and
- 34 (3) the rent payable under the new tenancy is unchanged from that payable under the previous tenancy, disregarding any increase or reduction in rent solely attributable to an adjustment of the boundaries of the holding (Sch 2 para 7(1)(c) (as so added)),

the reference in Sch 2 para 4(1)(a) to the commencement of the tenancy is read as referring to the commencement of the previous tenancy until the first occasion following the commencement of the new tenancy on which any such increase or reduction of, or direction with respect to, the rent payable under the new tenancy as is mentioned in Sch 2 para 4(1)(b), (c) (see the text and notes 4-6) takes effect (Sch 2 para 7(3) (as so added)). As to the meaning of 'agricultural holding' see PARA 323. As to the meaning of 'tenant' see PARA 323 note 5. As to the meaning of 'contract of tenancy' see PARA 325.

4 Agricultural Holdings Act 1986 Sch 2 para 4(1)(b). This applies whether or not such increase or reduction was made under s 12 (see PARA 338). In the circumstances set out in note 3 heads (1)-(3), references to 'rent' in Sch 2 para 4(1)(b) and Sch 2 para 4(1)(c) (see the text and note 6) must be read as references to the rent payable under the previous tenancy until the first occasion following the commencement of the new tenancy on which any such increase or reduction of, or direction with respect to, the rent payable under the new tenancy as is mentioned in Sch 2 para 4(1)(b), (c) takes effect: Sch 2 para 7(3) (as added: see note 3).

5 le under the Agricultural Holdings Act 1986 s 12 (see PARA 338).

6 Agricultural Holdings Act 1986 Sch 2 para 4(1)(c). See note 4.

7 le under the Agricultural Holdings Act 1986 s 6(3) (see PARA 330).

8 Agricultural Holdings Act 1986 Sch 2 para 4(2)(a). References concerning modifications to the model clauses are made under s 8(4) (see PARA 334).

9 As to the meaning of 'landlord' see PARA 323 note 7.

10 le under the Agricultural Holdings Act 1986 s 13(1), (3) (see PARA 340).

11 As to the meaning of 'fixed equipment' see PARA 332 note 6.

12 Agricultural Holdings Act 1986 Sch 2 para 4(2)(b). The surrender of part of a holding which consists wholly or solely of a building or structure fixed to the land does not amount to a 'change in the fixed equipment provided by the landlord', and such surrender was therefore not disregarded in *Mann v Gardner* (1990) 61 P & CR 1, [1991] 1 EGLR 9, CA (demand for arbitration was ineffective where it was based on such surrender less than three years before the demand). This decision was held to be per incuriam in *Secretary of State for Defence v Spencer* [2002] EWHC 2116 (Ch), [2003] 1 WLR 75 (surrender or addition of land amounts to a variation of other terms of the tenancy (see the text and note 16)).

13 Agricultural Holdings Act 1986 Sch 2 para 4(2)(c). As to the reduction in rent on the giving of notice to quit part of a holding see s 33; and PARA 397.

14 As to the termination of an agricultural tenancy see PARA 328 note 1.

15 See the Agricultural Holdings Act 1986 Sch 2 para 5; and *Jelley v Buckman* [1974] QB 488, [1973] 3 All ER 853, CA. See also the Law of Property Act 1925 s 140 (see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555); and *Stiles v Farrow* (1977) 241 Estates Gazette 623.

16 Adjustments of boundaries must be distinguished from surrender and regrant: *Jenkin R Lewis & Son Ltd v Kerman* [1971] Ch 477, [1970] 1 All ER 833; on appeal [1971] Ch 477, [1970] 3 All ER 414, CA. An addition (or surrender) of land may be treated as a variation of 'other terms of the tenancy': *Secretary of State for Defence v Spencer* [2002] EWHC 2116 (Ch), [2003] 1 WLR 75.

17 Agricultural Holdings Act 1986 Sch 2 para 6(a).

18 Agricultural Holdings Act 1986 Sch 2 para 6(b).

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### **340. Variation of rent for improvements.**

In certain circumstances a landlord<sup>1</sup> may charge an increased rent if he has carried out an improvement<sup>2</sup>, and the question whether compensation is provided for the improvement<sup>3</sup> under the Agricultural Holdings Act 1986 is immaterial<sup>4</sup>. This right arises in the case of the following improvements<sup>5</sup>:

- 76 (1) an improvement carried out at the request of, or in agreement with, the tenant<sup>6</sup>;

- 77 (2) an improvement carried out in compliance with a direction of the agricultural land tribunal<sup>7</sup> to provide, alter or repair fixed equipment<sup>8</sup>;
- 78 (3) a long term improvement carried out by the landlord after the agricultural land tribunal has given its consent thereto<sup>9</sup> on an application by the tenant<sup>10</sup>; and
- 79 (4) an improvement made in compliance with a direction given by the Secretary of State or the Welsh Ministers<sup>11</sup> under powers conferred by or under any enactment<sup>12</sup>.

The landlord must serve notice<sup>13</sup> of increase on the tenant within six months of the completion of the improvement and the increase can be charged from the date of the completion of the improvement<sup>14</sup>. The rent may be increased by an amount equal to the increase in the rental value of the holding attributable to the carrying out of the improvement<sup>15</sup>, except where a grant has been made to the landlord in respect of the improvement out of money provided by Parliament or local government funds<sup>16</sup>, in which case the increase in rent is to be reduced proportionately<sup>17</sup>. No increase of rent may be made in respect of any improvement under heads (1) and (2) above if within six months from its completion the landlord and tenant agree on any increase of rent or other benefit to the landlord in respect of the improvement<sup>18</sup>.

Disputes as to rent increases in respect of landlord's improvements must be determined by arbitration<sup>19</sup>.

Where work has been carried out by the tenant on the failure of the landlord to comply with a direction of the kind mentioned in head (2) above, the work is treated, for the purposes of these provisions, as if carried out by the landlord and as if any grant made to the tenant in respect thereof out of money provided by Parliament had been made to the landlord<sup>20</sup>; but no increase may take effect until the tenant has recovered the reasonable cost of the work from the landlord<sup>21</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 See the Agricultural Holdings Act 1986 s 13(1); and the text and notes 3-21.

3 I.e. under the Agricultural Holdings Act 1986 Pt V (ss 60-78) or Pt VI (ss 79-82).

4 Agricultural Holdings Act 1986 s 13(8).

5 As to the application of the Agricultural Holdings Act 1986 s 13 to opencast coal operations see the Opencast Coal Act 1958 s 14; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 419.

6 Agricultural Holdings Act 1986 s 13(2)(a). As to the meaning of 'tenant' see PARA 323 note 5.

7 As to agricultural land tribunals see PARAS 670-673.

8 Agricultural Holdings Act 1986 s 13(2)(b). As to the meaning of 'fixed equipment' see PARA 332 note 6. As to the power of the tribunal to give such a direction, and for the position where the tenant carries out work in default of compliance by the landlord, see s 11; and PARA 337.

9 I.e. under the Agricultural Holdings Act 1986 s 67(5) (see PARA 439).

10 Agricultural Holdings Act 1986 s 13(2)(c).

11 As to the Secretary of State and the Welsh Ministers see PARA 643.

12 Agricultural Holdings Act 1986 s 13(2)(d).

13 As to the service of notices see PARA 328 note 4.

14 Agricultural Holdings Act 1986 s 13(1).

15 Agricultural Holdings Act 1986 s 13(1).

- 16 As to the meaning of 'local government funds' see PARA 338 note 20.
- 17 Agricultural Holdings Act 1986 s 13(4)(a), (b). The reference in the text to money provided out of local government funds does not apply in relation to improvements under head (2) in the text: s 13(4)(a).
- 18 Agricultural Holdings Act 1986 s 13(3). As to arbitrations generally see PARA 469 et seq.
- 19 Agricultural Holdings Act 1986 s 13(7).
- 20 Agricultural Holdings Act 1986 s 13(5).
- 21 Agricultural Holdings Act 1986 s 13(6). As to compensation for improvements generally see PARA 425 et seq.

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## ***D. CULTIVATION OF LAND AND DISPOSAL OF PRODUCE***

### **341. Variation of terms as to permanent pasture.**

Where a contract of tenancy<sup>1</sup> provides for the maintenance of specified land, or a specified proportion of the holding, as permanent pasture<sup>2</sup> the landlord<sup>3</sup> or the tenant<sup>4</sup> may by written notice served on the other party demand a reference to arbitration<sup>5</sup> of the question whether it is expedient in order to secure the full and efficient farming<sup>6</sup> of the holding that the area of land required to be maintained as permanent pasture should be reduced<sup>7</sup>. The arbitrator may by his award direct that the provisions in the contract as to land which is to be maintained as permanent pasture or is to be treated as arable land, and as to cropping, have effect subject to such modifications as may be specified in the direction<sup>8</sup>. If the arbitrator's award directs the reduction of the area of land to be maintained as permanent pasture, the arbitrator may order that the contract of tenancy is to have effect as if it provided that, on quitting the holding on the termination of the tenancy<sup>9</sup>, the tenant should leave such area of land as may be specified in the order as permanent pasture<sup>10</sup>, or as temporary pasture sown with a seeds mixture of such a kind as may be so specified<sup>11</sup>, in addition to the area of land required to be maintained as permanent pasture by the contract of tenancy (as modified by the direction)<sup>12</sup>. The area of land so required to be left must not, however, exceed the area by which the permanent pasture required to be maintained under the contract has been reduced<sup>13</sup>. No compensation is payable in respect of anything done in pursuance of such an order<sup>14</sup>, and where the landlord and tenant agree to a variation of the terms of the tenancy such as could have been made by a direction or order as described above, they may also in that agreement agree to the exclusion of compensation<sup>15</sup>.

- 1 As to the meaning of 'contract of tenancy' see PARA 325.
- 2 'Pasture' includes meadow: s 96(1). As to what constitutes permanent pasture see PARA 342.
- 3 As to the meaning of 'landlord' see PARA 323 note 7.
- 4 As to the meaning of 'tenant' see PARA 323 note 5.
- 5 As to arbitrations generally see PARA 469 et seq.
- 6 As to the 'farming' of land see PARA 324.

- 7 Agricultural Holdings Act 1986 s 14(1), (2). As to the service of notices see PARA 328 note 4.
- 8 Agricultural Holdings Act 1986 s 14(3).
- 9 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 10 Agricultural Holdings Act 1986 s 14(4)(a).
- 11 Agricultural Holdings Act 1986 s 14(4)(b).
- 12 Agricultural Holdings Act 1986 s 14(4).
- 13 Agricultural Holdings Act 1986 s 14(5).
- 14 Agricultural Holdings Act 1986 s 76(1)(a).
- 15 Agricultural Holdings Act 1986 s 78(2).

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### **342. What constitutes permanent pasture.**

Sowing clover with the spring corn does not constitute laying down land in permanent pasture<sup>1</sup>, nor does merely sowing common grass seed make land old meadow again<sup>2</sup>.

It has been stated that continuance in pasture for 20 years impresses on the land the character of ancient meadow or pasture<sup>3</sup>; and land that has formerly been ploughed may after a sufficient lapse of time become ancient pasture which a tenant will be restrained from ploughing<sup>4</sup>. In regard, however, to modern tenancies, it will often be a question of the construction of the relevant terms of the contract of tenancy whether or not land which is arable at the commencement of the tenancy and is subsequently laid down to grass by the tenant becomes 'pasture land' or 'grass land', the ploughing of which may be restrained by injunction<sup>5</sup>.

- 1 *Birch v Stephenson* (1811) 3 Taunt 469.
- 2 *Simmons v Norton* (1831) 7 Bing 640.
- 3 *Morris v Morris* (1825) 1 Hog 238.
- 4 *Fermier v Maund* (1638) 1 Rep Ch 116.
- 5 *Rush v Lucas* [1910] 1 Ch 437; *Clarke-Jervoise v Scutt* [1920] 1 Ch 382.

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### **343. Restriction on ploughing up.**

Ploughing up meadow land is prima facie waste, and will be restrained even though there is no express covenant in the lease against it<sup>1</sup>; but if the ploughing is done for the purpose of

ameliorating the meadow, and does ameliorate it, the act may be justified<sup>2</sup>. The restriction on ploughing ancient pasture is the same as on meadow<sup>3</sup>. So far as tenancies governed by the Agricultural Holdings Act 1986 are concerned, the statutory right of freedom of cropping extends only to arable land<sup>4</sup>.

1 *Drury v Molins* (1801) 6 Ves 328; *Martin v Coggan* (1824) 1 Hog 120; *Simmons v Norton* (1831) 7 Bing 640.

2 *Simmons v Norton* (1831) 7 Bing 640. See also *Altman's Case* (1577) 3 Dyer 361b (digging drainage ditch to improve field was not waste).

3 *Atkins v Temple* (1625) 1 Rep Ch 13.

4 See the Agricultural Holdings Act 1986 s 15(1); and PARA 344. 'Arable land' in that provision does not include land in grass which, by the terms of a contract of tenancy, is to be retained in the same condition throughout the tenancy: s 15(7).

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#### **344. Disposal of produce and cropping.**

Notwithstanding any custom of the country<sup>1</sup> or the provisions of any contract of tenancy<sup>2</sup> or agreement respecting the method of cropping arable land<sup>3</sup> or the disposal of crops, a tenant<sup>4</sup> of an agricultural holding<sup>5</sup> may dispose of the produce of his holding, other than manure produced thereon<sup>6</sup>, and may practise any system of cropping of the arable land on his holding<sup>7</sup>; he may exercise these rights without incurring any penalty, forfeiture or liability<sup>8</sup>. He must, however, before exercising such right, or as soon as possible thereafter, make suitable and adequate provision to return to the holding the full equivalent manurial value of all crops sold off or removed in contravention of the custom, contract or agreement<sup>9</sup>, and, in the case of a system of cropping, to protect the holding from injury or deterioration<sup>10</sup>.

In the case of a tenancy from year to year these provisions have no application<sup>11</sup> as respects the year before the tenant quits the holding, or any period after he has given or received notice to quit which results in his quitting the holding<sup>12</sup>, or, in the case of any other tenancy, as respects the year before the termination thereof<sup>13</sup>. These provisions do not apply to a tenancy of land let as a smallholding by a smallholdings authority<sup>14</sup> or by the Secretary of State or the Welsh Ministers<sup>15</sup> in pursuance of a scheme approved by the Secretary of State or the Welsh Ministers for these purposes which provides for the farming of such holdings on a co-operative basis<sup>16</sup> or for the disposal of the produce of such holdings<sup>17</sup> or provides other centralised services for the tenants of such holdings<sup>18</sup>.

Where it appears to the Secretary of State or the Welsh Ministers that any scheme relating to smallholdings, which he has or they have approved for the purposes of these provisions, is not being satisfactorily carried out, he or they may, after giving at least one month's notice to the persons responsible for the management of the scheme<sup>19</sup> and giving those persons an opportunity of making representations<sup>20</sup>, withdraw approval to the scheme, and thereupon the statutory right of freedom of cropping and disposal of produce will apply to the tenancies formerly restricted under the scheme<sup>21</sup>.

Unless there is written agreement to the contrary the tenant may not, at any time after he has given or received notice to quit, sell or remove from the holding any manure or compost or any hay, straw or roots<sup>22</sup> grown in the last year of the tenancy without the prior written consent of the landlord<sup>23</sup>.

If the tenant exercises these rights of cropping and disposal of produce in a manner that actually results, or is likely to result, in injury to or deterioration of the holding, the landlord has two remedies only and no other: first, should the case so require, he may obtain an injunction restraining the tenant's exercise of such rights<sup>24</sup>; and secondly, in any case, he may, on the tenant quitting the holding, recover damages for any injury or deterioration attributable to the exercise by the tenant of his rights<sup>25</sup>. For the purposes of proceedings for such an injunction the question whether a tenant has exercised his rights in such a manner as to injure or deteriorate the holding or be likely to injure or deteriorate the holding is to be determined by arbitration<sup>26</sup>, the award being conclusive proof of the facts stated in it not only for those purposes but also for the purposes of an arbitration at the termination of the tenancy respecting a claim by the landlord for damages for such injury or deterioration<sup>27</sup>.

1 As to the customs of the country see PARAS 352-356.

2 As to the meaning of 'contract of tenancy' see PARA 325.

3 As to the meaning of 'arable land' see PARA 343 note 4.

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 As to the meaning of 'agricultural holding' see PARA 323.

6 Agricultural Holdings Act 1986 s 15(1)(a).

7 Agricultural Holdings Act 1986 s 15(1)(b).

8 Agricultural Holdings Act 1986 s 15(1).

9 Agricultural Holdings Act 1986 s 15(4)(a). As to the exclusion of things done in discharge of the obligations imposed by s 15(4) from the categories of improvements for which a tenant may claim compensation see s 76(3); and PARA 422.

10 Agricultural Holdings Act 1986 s 15(4)(b). See note 9.

11 Where the protection does not apply the tenant is liable on his covenants, and the Sale of Farming Stock Act 1816 s 11 (see PARA 602) accordingly applies: see *Lord Eldon v Hedley Bros* [1935] 2 KB 1, CA.

12 Agricultural Holdings Act 1986 s 15(2)(a). As to the restriction on the removal from the holding or the sale of manure, or compost, hay, straw or roots grown in the last year of a tenancy, after notice to terminate the tenancy see the text and notes 22-23.

13 Agricultural Holdings Act 1986 s 15(2)(b). As to the termination of an agricultural tenancy see PARA 328 note 1. The fact that it may not be known that the relevant time is within the last year of the tenancy is immaterial: see *Lord Eldon v Hedley Bros* [1935] 2 KB 1, CA.

14 As to smallholdings authorities see PARAS 650-653.

15 As to the Secretary of State and the Welsh Ministers see PARA 643.

16 Agricultural Holdings Act 1986 s 82(1)(a).

17 Agricultural Holdings Act 1986 s 82(1)(b).

18 Agricultural Holdings Act 1986 s 82(1)(c).

19 Agricultural Holdings Act 1986 s 82(3)(a).

20 Agricultural Holdings Act 1986 s 82(3)(b). As to the service of notices see PARA 328 note 4.

21 Agricultural Holdings Act 1986 s 82(2).

22 'Roots' means the produce of any root crop of a kind normally grown for consumption on the holding: Agricultural Holdings Act 1986 s 15(7).



- 23 Agricultural Holdings Act 1986 s 15(3). As to the meaning of 'landlord' see PARA 323 note 7.
- 24 Agricultural Holdings Act 1986 s 15(5)(a). The saving in the Agricultural Holdings Act 1986 for customary and other remedies does not affect s 15(5): see s 97. See also *Kent v Conniff* [1953] 1 QB 361, [1953] 1 All ER 155, CA.
- 25 Agricultural Holdings Act 1986 s 15(5)(b).
- 26 As to arbitrations generally see PARA 469 et seq.
- 27 Agricultural Holdings Act 1986 s 15(6).

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### **345. Good husbandry and good estate management.**

At common law there is no implied obligation on a landlord to manage his estate in accordance with the rules of good estate management whereas there is an implied covenant by the tenant to use and cultivate the land in a good and husbandlike manner according to the custom of the country, and to keep the buildings wind- and water-tight<sup>1</sup>. No sanctions are available to a tenant against a landlord breaching the rules of good estate management. A tenant in breach of the rules of good husbandry is exposed to the grant of a certificate of bad husbandry by the agricultural land tribunal<sup>2</sup>, and thereafter incontestable notice to quit<sup>3</sup>. Unless there is an express term of the tenancy the landlord has no right to serve a notice to remedy on the basis of a breach of the rules of good husbandry.

1 *Powley v Walker* (1793) 5 Term Rep 373; *Wedd v Porter* [1916] 2 KB 91. As to custom of the country and district see *Tucker v Linger* (1882) 21 Ch D 18; *Hutton v Warren* (1836) 1 M & W 466. 'Good estate management' is defined by the Agriculture Act 1947 s 10 and 'good husbandry' by s 11 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904); ss 10, 11 are applied to agricultural holdings governed by the Agricultural Holdings Act 1986 by s 96(3) (see PARA 330 note 13).

2 As to agricultural land tribunals see PARAS 670-673.

3 See the Agricultural Holdings Act 1986 Sch 3 Pt I Case C, Pt II para 9; and PARA 379. Good husbandry is also relevant for tenant's compensation under s 65(2)(b) (see PARA 442) and compensation due to the landlord under s 71(1) (see PARA 456). As to the service of notices see PARA 328 note 4.

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## **E DISTRESS**

### **346. Rent due more than a year previously.**

Until a day to be appointed<sup>1</sup> the landlord's<sup>2</sup> general right to recover by distress<sup>3</sup> the rent on an agricultural holding<sup>4</sup> is excluded where the rent became due in respect of the holding more than a year before the making of the distress<sup>5</sup>, although if it appears that in the ordinary course

of dealing between the landlord and the tenant<sup>6</sup> the payment of rent has been deferred until a quarter or half year after the date on which the rent legally became due, the rent is deemed, for the purposes of distress, to have legally become due at that later date<sup>7</sup>. Where rent is customarily payable a quarter or half year after it is legally due, the landlord is entitled to distrain for rent legally due but not yet payable according to the course of dealing, and at the same time for rent which became legally due more than a year previously but became payable by the course of dealing less than a year previously, although the total amount thus distrained for exceeds a year's rent<sup>8</sup>. Until the appointed day<sup>9</sup> the amount of any compensation due to the tenant<sup>10</sup> may be set off against the rent and in that case the landlord may not distrain for more than the balance<sup>11</sup>.

1 The Agricultural Holdings Act 1986 ss 16, 17 (see the text and notes 2-11) are prospectively repealed by the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 paras 41, 42, Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the general right to distress see **DISTRESS**.

4 As to the meaning of 'agricultural holding' see PARA 323.

5 Agricultural Holdings Act 1986 s 16(1) (prospectively repealed: see note 1).

6 As to the meaning of 'tenant' see PARA 323 note 5.

7 Agricultural Holdings Act 1986 s 16(2) (prospectively repealed: see note 1).

8 *Re Bew, ex p Bull* (1887) 18 QBD 642, DC; *Fairlamb v Beaumont* (1887) 31 Sol Jo 272; *Crosse v Welch* (1892) 8 TLR 401 (affd (1892) 8 TLR 709, CA).

9 See note 1.

10 Ie any compensation due to the tenant under the Agricultural Holdings Act 1986 or under custom or by agreement.

11 Agricultural Holdings Act 1986 s 17 (prospectively repealed: see note 1).

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### **347. Restrictions on right to distress.**

Until a day to be appointed<sup>1</sup> a landlord<sup>2</sup> may not distrain for rent property belonging to a person other than the tenant<sup>3</sup> which is agricultural<sup>4</sup> or other machinery and is on the holding under agreement with the tenant for its hire or use in the conduct of his business<sup>5</sup>; similarly, livestock<sup>6</sup> belonging to such a person which is on the holding solely for breeding purposes may not be distrained<sup>7</sup>, and agisted livestock<sup>8</sup> may not be distrained unless other sufficient distress cannot be found on the holding; if, there being insufficient other distress, agisted livestock is distrained, the amount recovered by such distress may not exceed the amount of the price agreed to be paid for the feeding or any part of the price which remains unpaid<sup>9</sup>. Until the appointed day<sup>10</sup> the owner of distrained agisted livestock can redeem it by paying that amount to the distrainer at any time before the livestock is sold, and such payment is full discharge of the owner's debt to the tenant<sup>11</sup>: any portion of the agisted livestock which remains on the

holding continues, as long as it so remains, to be liable to be distrained for the amount for which the whole of the livestock is distrainable<sup>12</sup>.

Beasts of the plough, sheep<sup>13</sup> and implements of trade<sup>14</sup> are privileged from distress for rent under common law, provided there is other sufficient distress on the premises. Where there is, in fact, other sufficient distress no action lies for taking such things if the distrainer bona fide believes that there is not other sufficient distress<sup>15</sup>. No privilege attaches to cart colts and young steers not yet broken in or used for harness or the plough<sup>16</sup>; and beasts of the plough may be distrained if there is no other sufficient subject of distress on the premises other than growing crops, for the landlord has a right to those subjects of distress which are immediately available<sup>17</sup>.

1 The Agricultural Holdings Act 1986 ss 18, 19 (see the text and notes 2-17) are prospectively repealed by the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 paras 41, 42, Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 As to the meaning of 'agricultural' see PARA 324.

5 Agricultural Holdings Act 1986 s 18(1)(a) (prospectively repealed: see note 1).

6 For this purpose 'livestock' includes any animal capable of being distrained: Agricultural Holdings Act 1986 ss 18(5), 19(3) (prospectively repealed: see note 1). As to the meaning of 'livestock' generally see PARA 324 note 2.

7 Agricultural Holdings Act 1986 s 18(1)(b) (prospectively repealed: see note 1). As to the liability of growing crops, etc to execution see *Evans v Roberts* (1826) 5 B & C 829; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1321.

8 'Agisted livestock' means livestock belonging to another person which has been taken in by the tenant of an agricultural holding to be fed at a fair price: Agricultural Holdings Act 1986 s 18(5) (prospectively repealed: see note 1). A 'fair price' need not be money; it may be eg 'milk for meat': see *London and Yorkshire Bank v Belton* (1885) 15 QBD 457. Cattle on land under an agreement by which the tenant agreed to allow the owner of the stock 'the exclusive right to feed the grass on the land for four weeks' for a payment of £2 were not 'taken in to be fed at a fair price': *Masters v Green* (1888) 20 QBD 807, DC. As to contracts of agistment see **ANIMALS** vol 2 (2008) PARAS 721-723.

9 Agricultural Holdings Act 1986 s 18(2) (prospectively repealed: see note 1).

10 See note 1.

11 Agricultural Holdings Act 1986 s 18(3) (prospectively repealed: see note 1).

12 Agricultural Holdings Act 1986 s 18(4) (prospectively repealed: see note 1). See, however, *Horsford v Webster* (1835) 1 Cr M & R 696, where a landlord who assented to the sale by his tenant of, inter alia, the eatage on part of the farm on condition that the rent in arrear should be paid out of the proceeds of the sale, was held not entitled to distrain on the purchaser's cattle which were consuming it.

13 Statutes of the Exchequer (temp incert) (51 Hen 3 c 4 (Ruff)); *Keen v Priest* (1859) 4 H & N 236. See also *Hutchins v Chambers* (1758) 1 Burr 579. The statute is declaratory of the common law: see *Swaffer v Mulcahy* [1934] 1 KB 608.

14 *Gorton v Falkner* (1792) 4 Term Rep 565; *Simpson v Hartopp* (1744) Willes 512; *Lavell v Richings* [1906] 1 KB 480. The implements of trade need not be in actual use at the time: *Nargett v Nias* (1859) 1 E & E 439.

15 *Jenner v Yolland* (1818) 6 Price 3.

16 See note 13.

17 *Piggott v Birtles* (1836) 1 M & W 441. As to the seizure and sale of growing crops for distress see the Landlord and Tenant Act 1851 s 2 (prospectively repealed); and **DISTRESS** vol 13 (2007 Reissue) PARA 1043.

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### **348. Disputes involving distress.**

Until a day to be appointed<sup>1</sup> any dispute arising in respect of any distress having been levied contrary to the statutory provisions<sup>2</sup>, or as to the ownership of any livestock<sup>3</sup> distrained or as to the price to be paid for the feeding of that stock<sup>4</sup>, or as to any other matter or thing relating to a distress on an agricultural holding<sup>5</sup>, is to be determined by the county court<sup>6</sup> or on a complaint by a magistrates' court<sup>7</sup>. Until that day<sup>8</sup> the court may make an order for the restoration of any livestock or things unlawfully distrained, may declare the price agreed to be paid for feeding, or may make any other order that justice requires<sup>9</sup>, and a person who is aggrieved by a decision of a magistrates' court may appeal to the Crown Court<sup>10</sup>.

1 The Agricultural Holdings Act 1986 s 19 (see the text and notes 2-9) is prospectively repealed by the Tribunals, Courts and Enforcement Act 2007 ss 86, 146, Sch 14 paras 41, 42, Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

2 Agricultural Holdings Act 1986 s 19(1)(a) (prospectively repealed: see note 1). The statutory provisions referred to in the text are ss 16-18 (prospectively repealed) (see PARAS 346-347).

3 As to the meaning of 'livestock' see PARAS 324 note 2, 347 note 6.

4 Agricultural Holdings Act 1986 s 19(1)(b) (prospectively repealed: see note 1).

5 Agricultural Holdings Act 1986 s 19(1)(c) (prospectively repealed: see note 1). As to the meaning of 'agricultural holding' see PARA 323.

6 'County court', in relation to an agricultural holding, means the county court within the district in which the holding or the larger part of the holding is situated: Agricultural Holdings Act 1986 s 96(1).

7 Agricultural Holdings Act 1986 s 19(1) (prospectively repealed: see note 1).

8 See note 1.

9 Agricultural Holdings Act 1986 s 19(1) (prospectively repealed: see note 1).

10 Agricultural Holdings Act 1986 s 19(2) (prospectively repealed: see note 1). As to appeals from magistrates' courts generally see **MAGISTRATES** vol 29(2) (Reissue) PARA 882 et seq.

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### **F. KEEPING RECORDS**

#### **349. Record of condition of holding.**

A landlord<sup>1</sup> or tenant<sup>2</sup> of an agricultural holding<sup>3</sup> may, at any time during the tenancy, require a record to be made of the fixed equipment<sup>4</sup> on the holding and of the general condition of the holding itself (including any parts not under cultivation)<sup>5</sup>, and in addition a tenant may require a record to be made of any existing improvements executed by him or for which he, with the

written consent of the landlord, paid compensation to an out-going tenant, and of any fixtures or buildings<sup>6</sup> which the tenant is entitled<sup>7</sup> to remove<sup>8</sup>. The record is to be made by a person appointed, in default of agreement between the landlord and tenant, by the President of the Royal Institution of Chartered Surveyors<sup>9</sup>, and the person so appointed has power to enter the holding at all reasonable times for the purpose of making such a record<sup>10</sup>. In default of agreement the cost of making any such record is to be borne by the landlord and tenant in equal shares<sup>11</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'agricultural holding' see PARA 323.

4 As to the meaning of 'fixed equipment' see PARA 332 note 6.

5 Agricultural Holdings Act 1986 s 22(1)(a). The making of such a record is a condition precedent to a claim by a tenant for compensation for the continuous adoption of a special system of farming under s 70: see s 70(2)(b); and PARA 451.

6 As to the meaning of 'building' see PARA 332 note 6.

7 Ie under the Agricultural Holdings Act 1986 s 10 (see PARA 336).

8 Agricultural Holdings Act 1986 s 22(1)(b).

9 As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71. An application to the President for a person to be appointed by him must be accompanied by the prescribed fee: Agricultural Holdings Act 1986 s 22(4). At the date at which this volume states the law that fee is £115: Agricultural Holdings (Fees) Regulations 1996, SI 1996/337, reg 2(a). Any instrument of appointment purporting to be made by the President and to be signed by him or on his behalf is to be taken to be such an instrument unless the contrary is shown: Agricultural Holdings Act 1986 s 22(5).

10 Agricultural Holdings Act 1986 s 22(2).

11 Agricultural Holdings Act 1986 s 22(3).

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## **G. POWERS OF ENTRY**

### **350. Landlord's power of entry.**

The landlord<sup>1</sup> of an agricultural holding<sup>2</sup> or any person authorised by him may at all reasonable times enter on the holding, or any part of it, for the purposes of viewing the state of the holding<sup>3</sup>, fulfilling the landlord's responsibilities to manage the holding in accordance with the rules of good estate management<sup>4</sup>, or providing or improving fixed equipment<sup>5</sup> on the holding otherwise than in fulfilment of those responsibilities<sup>6</sup>. The landlord also has a power to enter in order to execute repairs<sup>7</sup>. The landlord's covenant of quiet enjoyment means that if he enters the tenant's premises without contractual or statutory authority he is a trespasser<sup>8</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 Agricultural Holdings Act 1986 s 23(1)(a).

4 Agricultural Holdings Act 1986 s 23(1)(b). As to the rules of good estate management see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

5 As to the meaning of 'fixed equipment' see PARA 332 note 6.

6 Agricultural Holdings Act 1986 s 23(1)(c).

7 See the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473, Schedule para 4(2). As to those regulations see PARA 333.

8 *Mint v Good* [1951] 1 KB 517, [1950] 2 All ER 1159, CA; *McGreal v Wake* (1984) 13 HLR 107, [1984] 1 EGLR 42, CA.

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## ***H. EXTENSION OF TENANCIES IN LIEU OF CLAIMS TO EMBLEMENTS***

### **351. Tenancies determined by death or cesser of landlord's estate.**

Where the tenancy of any agricultural holding<sup>1</sup> held by a tenant<sup>2</sup> at a rack rent determines by the death or cesser of the estate of any landlord<sup>3</sup> entitled for his life, or for any other uncertain interest, instead of claims to emblements<sup>4</sup> the tenant is entitled to continue in occupation of the holding until the occupation is determined by a 12 months' notice to quit expiring at the end of a year of the tenancy, and then to quit upon the terms of his tenancy in the same manner as if it were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate<sup>5</sup>. The succeeding landlord is entitled to recover from the tenant, in the same manner as his predecessor could have done, a fair proportion of the rent for the period from the date of the death or cesser of the estate of his predecessor to the time of the tenant so quitting<sup>6</sup>. The succeeding landlord and the tenant are, as between themselves and against each other, entitled to all the benefits and advantages, and are subject to the terms, conditions and restrictions to which the preceding landlord and tenant respectively would have been entitled and subject if the tenancy had determined at the expiration of the 12 months' notice to quit<sup>7</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 As to emblements see PARA 369.

5 Agricultural Holdings Act 1986 s 21(1). It has been held that this provision applies to the case of a tenancy of glebe lands, terminating upon the cesser of the lessor's incumbency: see *Stephens v Balls* (1957) 107 LJo 764, County Court. As to the service of notices see PARA 328 note 4.

6 Agricultural Holdings Act 1986 s 21(2).

7 Agricultural Holdings Act 1986 s 21(3).

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## **I. CUSTOMS OF THE COUNTRY**

### **352. Incorporation of custom in the tenancy.**

The custom of the country, whereas once prevalent, is in modern times likely to have been excluded by the terms of the tenancy agreement itself<sup>1</sup> or by statute<sup>2</sup>. In general a custom, when once proved, is applicable to every agricultural tenancy in the district however created, whether orally or by writing<sup>3</sup>. It is a contractual term which the law implies in the absence of any particular contract between the parties<sup>4</sup>. The custom of the country does not imply an immemorial or universal usage, but only the prevalent usage of the neighbourhood where the land lies which has subsisted for a reasonable length of time<sup>5</sup>. The custom may vary not only between counties but in different parts of the same county<sup>6</sup>.

1 *Wilkins v Wood* (1848) 17 LJQB 319; *Wigglesworth v Dallison* (1779) 1 Doug KB 201; *Senior v Armytage* (1816) Holt NP 197, as explained in *Hutton v Warren* (1836) 1 M & W 466. Custom was excluded by the agreements in *Webb v Plummer* (1819) 2 B & Ald 746; *Richards v Davies* [1921] 1 Ch 90. See PARA 355.

2 The Agricultural Holdings Act 1986 s 97 (see PARA 468) preserves customary rights save in so far as superseded. Customs inconsistent with s 15(5) (disposal of produce, etc: see PARA 344), s 77 (compensation for improvements: see PARA 417) or s 83(1) (arbitration: see PARA 469) are excluded.

3 See note 1.

4 *Boraston v Green* (1812) 16 East 71. As to express covenants to cultivate in a husbandlike manner or according to the custom of the country see PARA 358.

In the absence of agreement a custom of the country can determine the commencement and duration of a tenancy as starting from particular quarter-days; such a custom may be incorporated even into a written contract of tenancy: see *Doe d Dagget v Snowdon* (1775) 2 Wm Bl 1224.

5 See *Williams v Lewis* [1915] 3 KB 493 at 494 per Bray J, approving the statement in the text as contained in an earlier edition of this work. See also *Legh v Hewitt* (1803) 4 East 154; *Dalby v Hirst* (1819) 1 Brod & Bing 224; *Tucker v Linger* (1882) 21 ChD 18, CA (affd (1883) 8 App Cas 508, HL); *Dashwood v Magniac* [1891] 3 Ch 306 at 324. The custom that the tenant goes out as he came in has no reference to claims for bad farming, but applies only to valuations of tenant right: *Williams v Lewis* at 495 per Bray J.

6 A schedule of customs was prepared in 1945 by the sub-committee of the Central Association of Agricultural Valuers. A list of the more important customs prevailing in the different counties may be found in Mustoe and Wood *Agricultural Law and Tenant Right* (4th edn) 389 et seq. An historic compilation collecting and commenting on the custom of the various counties is contained in Sidney Wright *The Law Relating to Landed Estates*, published by Frank P Wilson of London, Estates Gazette (late-19th century). A further resource is the 1926 edition of Lely & Aggs *Agricultural Holdings* (Butterworth & Co). See also *The Agricultural Holdings Act 1883* by James Brooke Little (Shaw & Sons, London, 1884).

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### **353. Proof of custom.**

The custom of the country is the custom prevalent throughout the district, and is not proved by showing that it is the usage of a particular estate or of the property, however large, of a particular individual; and such usage will not be imported into the terms of a tenancy where it is not shown that the tenant was aware of it<sup>1</sup>. The custom is to be collected, not from what witnesses say they think the custom is, but from what they depose to have been done publicly throughout the district<sup>2</sup>. It must be proved by the party alleging it. Thus a custom to retain part of the holding or to take away-going crops, etc, must be proved by the tenant; and in the absence of proof of such custom the tenant must give up possession of land and crops at the termination of the tenancy<sup>3</sup>.

1 *Womersley v Dally* (1857) 26 LJ Ex 219.

2 *Tucker v Linger* (1882) 21 ChD 18 at 34, CA, per Jessel MR; affd (1883) 8 App Cas 508, HL.

3 *Caldecott v Smythies* (1837) 7 C & P 808.

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### **354. Reasonableness of custom.**

A custom of the country must be reasonable, otherwise it is void<sup>1</sup>; and the reasonableness or unreasonableness of the custom is a question of law for the court, and not of fact<sup>2</sup>.

The following customs have been expressly held to be reasonable:

- 80 (1) that the tenant should have the away-going crop after the expiration of the term of the tenancy<sup>3</sup>, and crop one-third of the arable for that purpose<sup>4</sup>;
- 81 (2) that on a taking from old Lady Day (5 April) the tenant should enter upon the arable at Candlemas to prepare for the Lent corn<sup>5</sup>;
- 82 (3) that a tenant should be entitled to a portion of the expenses of draining the land, though the drainage be done without the landlord's consent or knowledge<sup>6</sup>;
- 83 (4) that if there is no incoming tenant the landlord should pay to the outgoing tenant the valuation for fallows, dressing, etc<sup>7</sup>;
- 84 (5) that a tenant may leave his away-going crop in the barn of the farm after he has quitted the premises<sup>8</sup>;
- 85 (6) that a tenant should provide work and labour, tillage and sowing, and all materials for cultivation in his away-going year, and that the landlord should make him compensation for the same<sup>9</sup>;
- 86 (7) that the tenant should collect flints turned up in the ordinary course of good husbandry and sell them for his own benefit, notwithstanding a reservation in the lease of minerals to the landlord<sup>10</sup>; and
- 87 (8) that the landlord should deduct rent in arrear from the valuation payable to the outgoing tenant<sup>11</sup>.

1 *Bradburn v Foley* (1878) 3 CPD 129.

2 *Tyson v Smith* (1838) 9 Ad & El 406 at 421.

3 *Wigglesworth v Dallison* (1779) 1 Doug KB 201.

4 *Griffiths v Tombs* (1833) 7 C & P 810; *Caldecott v Smythies* (1837) 7 C & P 808.



- 5 *Doe d Dagget v Snowdon* (1775) 2 Wm Bl 1224.
- 6 *Mousley v Ludlam* (1851) 21 LJQB 64. Compensation for drainage works is also recoverable under the Agricultural Holdings Act 1986: see Sch 7 para 23, Sch 8 para 1, Sch 9 para 16; and PARAS 426, 432. As to compensation for improvements under the Agricultural Holdings Act 1986 generally see PARA 425 et seq.
- 7 *Dalby v Hirst* (1819) 1 Brod & Bing 224; *Faviell v Gaskoin* (1852) 7 Exch 273.
- 8 *Beavan v Delahay* (1788) 1 Hy Bl 5; *Lewis v Harris* (1778) 1 Hy Bl 7n.
- 9 *Senior v Armytage* (1816) Holt NP 197.
- 10 *Tucker v Linger* (1883) 8 App Cas 508, HL.
- 11 *Re Wilson, ex p Lord Hastings* (1893) 62 LJQB 628.

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### **355. Exclusion of custom.**

Customary compensation is excluded by statute subject to certain exceptions, and accordingly all customs of the country which led to compensation are to this extent nullified<sup>1</sup>. Where the terms of a lease are inconsistent with the custom of the country, the custom is excluded<sup>2</sup>. Thus a custom for an allowance from the incoming tenant for foldage (a mode of manuring) was excluded by the terms of a lease which provided for the tenant keeping a flock of sheep on the farm and in the last year of the term carrying the manure out on to the fallows, the landlord paying on the quitting of the farm for fallowing the land and the cartage of dung, but nothing for the dung itself<sup>3</sup>. Where there was a provision in a lease that the tenant should leave the manure in the fold to be expended by the landlord or incoming tenant, but that provision did not mention any payment for it, a custom for the outgoing tenant to leave the manure and be paid for it was excluded<sup>4</sup>. A covenant in a lease by the tenant, not to underlet or permit any other person to use or occupy any part of the demised premises without the landlord's consent, excluded a custom for the outgoing tenant to sell or let the grass keep in the last year of the tenancy but did not exclude agistment<sup>5</sup>.

- 1 See the Agricultural Holdings Act 1986 s 77; and PARA 417.
- 2 See the cases cited in PARA 352 note 1.
- 3 *Webb v Plummer* (1819) 2 B & Ald 746.
- 4 *Roberts v Barker* (1833) 1 Cr & M 808.
- 5 *Richards v Davies* [1921] 1 Ch 90. As to contracts of agistment see **ANIMALS** vol 2 (2008) PARAS 721-723.

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### **356. Custom not excluded.**

Where a lease contained no stipulations as to the mode of quitting, the outgoing tenant was held to be entitled to his away-going crop as against the incoming tenant according to the custom of the country, even though the crop had been sown in contravention of the terms of the lease, and that contravention might have entitled the landlord to damages for the removal of the crop<sup>1</sup>.

A stipulation in a lease that the tenant would consume three-quarters of the hay and straw on the farm and spread the manure arising therefrom, and leave what was not spread for the use of the landlord on receiving a reasonable price for it, did not exclude a custom of the country by which the tenant was entitled on quitting to receive from the landlord or incoming tenant a reasonable allowance for seeds and labour on the arable during the last year of the tenancy, and was bound to leave the manure for the landlord if he would purchase it<sup>2</sup>.

1 *Holding v Pigott* (1831) 7 Bing 465 (landlord was not a party to the action). See also *Martin v Coulman* (1834) 4 LJKB 37; *Re Constable and Cranswick* (1899) 80 LT 164. See, however, *Muncey v Dennis* (1856) 1 H & N 216, where there are dicta to the effect that reliance cannot be placed against anyone on a custom inconsistent with the terms of a lease, the tenant being unable to have any greater right against a stranger than he has against his landlord.

2 *Hutton v Warren* (1836) 1 M & W 466. For a further example see also PARA 354 text and note 9. As to the statutory right of a tenant whose tenancy is governed by the Agricultural Holdings Act 1986 to dispose of produce other than manure see PARA 344; and as to his right to receive compensation for seeds sown and acts of husbandry see PARA 433.

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## **J. EXPRESS AND IMPLIED TERMS**

### **357. Obligations that will be implied.**

There is no implied covenant or warranty on the part of the landlord that the land leased or let is reasonably fit for cultivation<sup>1</sup>, or that no noxious plants are growing on the demised premises<sup>2</sup>. The law implies an undertaking or covenant on the part of an agricultural tenant to cultivate the land in a husbandlike manner according to the custom of the country, whether the land is or is not in good condition at the commencement of his tenancy, unless there is a particular agreement dispensing with that engagement<sup>3</sup>.

The custom of the country includes not only special customs regulating particular matters, but also the prevalent course of good husbandry in the district<sup>4</sup>; and the rule will be broken if the tenant does not follow this course of husbandry<sup>5</sup>. The tenant may sell hay or straw off the premises<sup>6</sup>, provided this is not contrary to special custom or to the terms of the lease<sup>7</sup>, but he is bound to consume on the farm such produce as would be consumed thereon if the farm were treated in a husbandlike manner<sup>8</sup>, and not to remove manure<sup>9</sup>; and he must not commit waste<sup>10</sup>.

A tenant under a tenancy from year to year of a farm and buildings at a fixed rent, who has not entered into any other express agreement with the landlord than as to the amount of rent, is also under an obligation to use the premises in a husbandlike or tenantlike manner, but is not liable to sustain and uphold the premises<sup>11</sup>. The bare relation of landlord and tenant is a sufficient consideration for the tenant's promise to cultivate the land in a good and husbandlike

manner according to the custom of the country<sup>12</sup>. Such an undertaking is, however, implied only where the relation of landlord and tenant actually exists, and for that reason neglect by an incumbent to cultivate glebe land in a husbandlike manner does not render him or his executors liable in an action by a succeeding incumbent, though he or they may be liable for leaving the buildings, hedges and fences in a state of decay<sup>13</sup>.

1 *Sutton v Temple* (1843) 12 M & W 52; *Hart v Windsor* (1843) 12 M & W 68.

2 *Erskine v Adeane, Bennett's Claim* (1873) 8 Ch App 756; *Cheater v Cater* [1918] 1 KB 247, CA.

3 *Brown v Crump* (1815) 1 Marsh 567; *Williams v Lewis* [1915] 3 KB 493 at 494 per Bray J, approving the statement in the text as contained in an earlier edition of this work. See also *Onslow v -* (1809) 16 Ves 173; *Hallifax v Chambers* (1839) 4 M & W 662; *Westropp v Elligott* (1884) 9 App Cas 815 at 823-824, HL, per Lord Blackburn; *Wedd v Porter* [1916] 2 KB 91, CA. The erection of needless dwelling houses is a breach of an implied covenant to use the land as an agricultural holding, and may also be waste: *Brooke v Mernagh* (1888) 23 LR Ir 86; *Brooke v Kavanagh* (1888) 23 LR Ir 112. An implied covenant is enforceable by an assignee of the reversion expectant on the determination of a tenancy: *Wedd v Porter*.

4 *Legh v Hewitt* (1803) 4 East 154 at 159, 161; and see PARA 358.

5 Eg if he has half his farm under tillage at the same time, while no other farmer in the neighbourhood tills more than a third: *Legh v Hewitt* (1803) 4 East 154. A tenant is not, however, necessarily bound to have a certain portion of the land every year in a certain tillage or to leave a certain quantity fallow: *Brown v Crump* (1815) 1 Marsh 567. As to the right of a tenant of a holding whose tenancy is governed by the Agricultural Holdings Act 1986 to practise any system of cropping arable land notwithstanding any custom to the contrary see PARA 344.

6 He may not, however, do so after having given or received notice to quit, in relation to such produce grown in the last year of the tenancy: see the Agricultural Holdings Act 1986 s 15(3); and PARA 344. As to the service of notices see PARA 328 note 4.

7 *Gough v Howard* (1801) Peake Add Cas 197. A tenant of a holding under a tenancy governed by the Agricultural Holdings Act 1986 has a statutory right to dispose of the produce of the holding, notwithstanding any custom or agreement to the contrary, within the limits of and subject to the safeguards provided by the statute: see PARA 344.

8 *Onslow v -* (1809) 16 Ves 173; *Brown v Crump* (1815) 1 Marsh 567 at 569. If the tenant exercises his statutory right to dispose of produce, he must return to the holding the full equivalent manorial value of the produce removed from the holding: see PARA 344.

9 *Powley v Walker* (1793) 5 Term Rep 373; *Gough v Howard* (1801) Peake Add Cas 197. The removal of manure is not included in the statutory right of disposal of produce under the Agricultural Holdings Act 1986: see PARA 344.

10 Eg by turning pasture land into arable: Co Litt 53b; *Simmons v Norton* (1831) 7 Bing 640 at 647. However, the land must be in pasture at the beginning of the tenancy: *Goring v Goring* (1676) 3 Swan 661; *Rush v Lucas* [1910] 1 Ch 437.

11 *Warren v Keen* [1954] 1 QB 15, [1953] 2 All ER 1118, CA (explaining *Wedd v Porter* [1916] 2 KB 91, CA, and disapproving the use in that case of the expression 'wind and water tight').

12 *Powley v Walker* (1793) 5 Term Rep 373; *Onslow v -* (1809) 16 Ves 173; *Westropp v Elligott* (1884) 9 App Cas 815 at 823-824, HL, per Lord Blackburn.

13 *Bird v Relph* (1833) 4 B & Ad 826; and see **ECCLESIASTICAL LAW**.

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### **358. Express covenants as to management of farm by tenant.**

The management of the farm is usually regulated by express covenants, which may prescribe a particular system of tillage<sup>1</sup>, or may contain a general covenant to cultivate in a husbandlike manner<sup>2</sup> according to the best rules of husbandry practised in the district. Compliance with a covenant to treat a farm in a good and husbandlike manner is proved by evidence of management in accordance with the custom of the country<sup>3</sup>. A covenant to cultivate on a particular system according to the custom of the country binds the tenant to adopt the system only so far as the custom makes it universally obligatory<sup>4</sup>. Conversion of part of a farm, consisting of arable and pasture land, into a market garden, and the erection of glass-houses, etc, thereon, is not a breach of a covenant to cultivate the farm in a good, proper and husbandlike manner according to the best rules of husbandry practised in the neighbourhood<sup>5</sup>. On the other hand, such a covenant, or the ordinary obligation to cultivate in a husbandlike manner according to the custom of the country, is broken by having in arable tillage half a farm, when it is proved that no other farmers in the neighbourhood put more than one-third in tillage, and some even less<sup>6</sup>. An agreement to manage and leave the farm as it has been managed and left by former tenants does not impose on the tenant without notice the terms on which former tenants have held; he must be guided by the condition and mode of management when he took possession<sup>7</sup>.

A covenant not to sow with more than two grain crops during four years applies to any four years of the term however taken, and not to each successive four years from the commencement<sup>8</sup>. A covenant to cultivate on the four-course system according to the custom of the country means cultivating in that manner only so far as is obligatory by the custom<sup>9</sup>. Subject to certain exceptions, a tenant of an agricultural holding governed by the Agricultural Holdings Act 1986 has full right to adopt any system of cropping the arable land on the holding, notwithstanding any covenant or custom to the contrary, without incurring any penalty, forfeiture or liability, provided that he makes suitable and adequate provisions to protect the holding from injury or deterioration<sup>10</sup>.

Under a covenant by the tenant to permit the landlord to enter on such part of the land as in the last year of the term is sown with barley or oats, and to sow clover therewith, the tenant is not bound to inform the landlord of an intention to sow barley or oats<sup>11</sup>.

1 As to the four-course system see *Rankin v Lay* (1860) 2 De GF & J 65.

2 A covenant to manage pasture in a husbandlike manner forbids the conversion of pasture into arable land: *Drury v Molins* (1801) 6 Ves 328; *Clarke-Jervoise v Scutt* [1920] 1 Ch 382. As to such a covenant in respect of land which is not for the time being built on see *Hills v Rowland* (1853) 4 De GM & G 430.

3 *Legh v Hewitt* (1803) 4 East 154 at 160; *Williams v Lewis* [1915] 3 KB 493 at 494-495.

4 *Newson v Smythies* (1859) 1 F & F 477 at 479.

5 *Meux v Copley* [1892] 2 Ch 253.

6 *Legh v Hewitt* (1803) 4 East 154 at 159 per Lord Ellenborough CJ: 'I understand the parties to have meant no more than this, that the tenant should conform to the prevalent usage of the country where the lands lie. From the subject matter of the contract it is evident that the word custom, as here used, cannot mean a custom in the strict legal signification of the word; for that must be taken with reference to some defined limit or space'.

7 *Liebenrood v Vines* (1815) 1 Mer 15 at 18; *Viscount Hood v Kendall* (1855) 17 CB 260. As to a covenant to leave 'the turnip or fallow breaks once ploughed for the incoming tenant' see *Hunter v Miller* (1863) 9 LT 159, HL.

8 *Fleming v Snook* (1842) 5 Beav 250.

9 *Newson v Smythies* (1859) 1 F & F 477.

10 See PARA 344.

11 *Hughes v Richman* (1774) 1 Cowp 125.

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### **359. Covenants to consume or not to remove produce.**

The removal of produce which is usually consumed on the farm, such as straw, hay and roots, may be prohibited by express covenant; but the prohibition is usually modified, for example, where it is restricted to the last year of the term<sup>1</sup> or where the removal is permitted on condition of bringing back an equivalent in manure<sup>2</sup>. The tenant of an agricultural holding also has the right by statute, subject to certain exceptions and safeguards, to disregard the provisions of any covenant or agreement restricting his right to dispose of the produce of the holding, other than manure, without incurring any penalty, liability or forfeiture<sup>3</sup>.

A lease containing a covenant to consume all hay, straw and clover grown on the farm, and to use the manure on the farm, but silent as to hay, etc, unconsumed on quitting, is not inconsistent with a custom that the tenant be paid for all hay, etc, left unconsumed on his quitting; such a covenant means only that the tenant will not remove any hay, etc, from the farm; it does not compel the tenant to cause all of it to be consumed during the tenancy<sup>4</sup>. A tenant is not liable under a covenant to consume all hay and straw and spread the manure therefrom on the farm after destruction of his stacks of hay and corn by accidental fire<sup>5</sup>.

A covenant by the tenant not to sell or remove from the premises during the last year of the term any of the hay, straw and fodder which arises and grows thereon, prohibits him from selling or removing during the last year any hay, straw, etc, grown in previous years<sup>6</sup>.

A covenant by a tenant not to sell any hay or straw, etc, off the farm is broken by a sale of straw off the farm by the tenant after the determination of the tenancy<sup>7</sup>. An absolute covenant to consume hay and straw on the farm, being equivalent to a negative covenant not to remove it, may be enforced by injunction<sup>8</sup>. Such a covenant touches and concerns the land, and the benefit of it therefore runs with the reversion<sup>9</sup>.

Where a tenant bound by covenant to consume the hay on the farm, or to bring in manure, has sold, on quitting, a rick of hay without informing the purchaser of the obligation to bring in manure, and the hay is injured by lapse of time caused by the refusal of the incoming tenant to permit the taking of the hay until the performance of the covenant to bring in manure, the purchaser is entitled to refuse to take it, and the vendor cannot recover the price of the hay<sup>10</sup>.

Where a clause in a farming agreement provides that no hay or straw may be sold off the holding, unless the 'value' of the hay, etc, so sold off is returned in manure on the land, it is not clear whether the tenant, having sold the hay or straw, is bound only to return as much manure as the straw would have produced, or to return in manure the price or market value of the straw<sup>11</sup>.

Where the tenant is entitled to be paid by the landlord or incoming tenant at 'a fair price' for the hay, straw, etc, left on the farm, but not for the manure, he is entitled only to a fodder or consuming price of the hay and straw, not to the market price<sup>12</sup>. Where the tenant is entitled to be paid for the hay, straw and manure left on the farm 'at a fair valuation', the valuer is not necessarily bound to value the same either at the market or the consuming price, it being a matter of evidence what is a 'fair valuation'<sup>13</sup>.

1 *Gale v Bates* (1864) 3 H & C 84. As to the statutory restriction on the removal of manure, etc, after notice to quit an agricultural holding governed by the Agricultural Holdings Act 1986, see PARA 344.

2 See *Westropp v Elligott* (1884) 9 App Cas 815 at 825, HL. A covenant not to mow meadow land more than once a year without an exception of cases where an equivalent in manure is returned to the land is not so unusual a covenant as to form an objection to the lessee's title on assignment: *Hyde v Warden* (1877) 3 Ex D 72 at 82, CA. The farm is not prejudiced if the tenant returns the 'full equivalent manurial value' of the produce sold off (see the Agricultural Holdings Act 1986 s 15; and PARA 344); but this is not a fixed value, and a stipulation for the return of one-third of the market value avoids the uncertainty. As to extension of the term where the tenant is bound to consume the last year's produce on the premises see *Earl St Germain's v Willan* (1823) 2 B & C 216; but more usually the tenant is entitled to be paid for hay and straw, and for manure left on quitting. A requirement in a lease for the payment of additional rent for each ton of 'hay, straw, or other dry fodder' sold off has been held to include the selling off of hay which was bad and not fit for fodder: see *Fielden v Tattersall* (1863) 1 New Rep 332. A restriction is imposed upon the right of the landlord to require additional rent or other liquidated damages for the breach or non-observance by the tenant of terms of the contract of tenancy: see PARA 331.

3 As to the right to dispose of produce see PARA 344.

4 *Muncey v Dennis* (1856) 1 H & N 216.

5 *Re Hull and Lady Meux* [1905] 1 KB 588.

6 *Gale v Bates* (1864) 3 H & C 84; *Meggesson v Groves* [1917] 1 Ch 158.

7 *Massey v Goodall* (1851) 17 QB 310.

8 *Crosse v Duckers* (1873) 27 LT 816.

9 *Chapman v Smith* [1907] 2 Ch 97.

10 *Smith v Chance* (1819) 2 B & Ald 753.

11 *Lowndes v Fountain* (1855) 11 Exch 487. Where produce of a holding is disposed of in exercise of the statutory right, it is the full equivalent manurial value of the crops that is to be returned to the holding: see the Agricultural Holdings Act 1986 s 15(4); and PARA 344.

12 *Clarke v Westrope* (1856) 18 CB 765.

13 *Cumberland v Bowes* (1854) 15 CB 348.

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### **360. Manuring covenants.**

A covenant by a tenant with his landlord to leave the manure made by him on the farm and to sell it to the incoming tenant at a valuation gives the tenant a right of on-stand on the farm for the manure until sold to an incoming tenant, and trespass lies against an incoming tenant for the removal and use of the manure before the valuation<sup>1</sup>.

A covenant by a tenant to manure with two sufficient sets of muck within the space of six of the last years of the term, the last set to be laid within three years of the expiration of the term, is satisfied by laying both sets within the last three years of the term<sup>2</sup>.

The condition of a bond that the tenant must not sell or convey away any dung, compost or manure from the farm is broken by the removal of manure made by cattle purchased from the tenant and allowed to remain on the farm and fed by the purchaser with provender from his own farm<sup>3</sup>.

A covenant by a tenant that he will consume on the farm all the turnips, etc, but that if he shall take or sell off any part thereof, which he is at liberty to do, then for every ton sold he shall bring back and spread a certain quantity of manure, is an alternative covenant, and in order to make the tenant liable for a breach of it, both failure to consume and failure to bring back manure must be proved<sup>4</sup>.

1 *Beaty v Gibbons* (1812) 16 East 116.

2 *Pownall v Moores* (1822) 5 B & Ald 416.

3 *Hindle v Pollitt* (1840) 6 M & W 529.

4 *Richards v Bluck* (1848) 6 CB 437.

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### **361. Burning of heather, rough grass, etc.**

Where a lease<sup>1</sup> of land contains a covenant, condition or agreement which prohibits or restricts the burning of heather or grass by the tenant<sup>2</sup>, the agricultural land tribunal<sup>3</sup>, on the tenant's application, may, if it appears to it that the covenant, condition or agreement is preventing or impeding the proper use of the land or any of it for agriculture and that in all the circumstances it is expedient to do so, give such directions as it thinks fit for avoiding or relaxing the provision<sup>4</sup>. This power is exercisable in respect of all leases notwithstanding any stipulation to the contrary<sup>5</sup>.

1 'Lease' means a lease, under-lease or other tenancy, assignment operating as a lease or under-lease, or an agreement for such lease, under-lease or other tenancy, or assignment: Landlord and Tenant Act 1927 s 25(1); definition applied by the Hill Farming Act 1946 s 21(3).

2 'Tenant' means any person entitled in possession to the holding under any contract of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law or otherwise: Landlord and Tenant Act 1927 s 25(1); definition applied by the Hill Farming Act 1946 s 21(3). For the power to regulate the burning of heather and grass see s 20; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1301-1304.

3 As to agricultural land tribunals see PARAS 670-673.

4 Hill Farming Act 1946 s 21(1) (substituted by the Agriculture Act 1958 s 8, Sch 1 para 1).

5 Hill Farming Act 1946 s 21(2). See, however, the Heather and Grass etc (Burning) Regulations 1986, SI 1986/428; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1301-1304.

## **UPDATE**

### **361 Burning of heather, rough grass, etc**

NOTE 5--SI 1986/482 replaced: Heather and Grass etc Burning (Wales) Regulations 2008, SI 2008/1081.

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### **362. Enforcement of custom by injunction.**

The general law relating to injunctions applies to agricultural tenancies, including in relation to custom<sup>1</sup>. A tenant will be restrained by injunction from committing any act of voluntary waste or from acting contrary to the custom of the country. Thus a tenant may be restrained from ploughing up ancient pasture or meadow land<sup>2</sup>, from sowing pernicious crops<sup>3</sup>, from carrying away manure<sup>4</sup>, hay, straw and turnips<sup>5</sup>, and from damaging hedgerows<sup>6</sup>, contrary to the custom of the country<sup>7</sup>.

1 See **CIVIL PROCEDURE** vol 11 (2009) PARA 361.

2 *Drury v Molins* (1801) 6 Ves 328; *Lord Grey de Wilton v Saxon* (1801) 6 Ves 106; *Pratt v Brett* (1817) 2 Madd 62. In *Re Pemberton and Cooper and Cooper* (1912) 107 LT 716, a tenant who had been restrained from ploughing up pasture land by interim injunction which was dissolved at the hearing of the action was held to be entitled to damages for the loss resulting. See also *Clarke-Jervoise v Scutt* [1920] 1 Ch 382.

3 *Pratt v Brett* (1817) 2 Madd 62.

4 *Pulteney v Shelton* (1799) 5 Ves 260n.

5 *Walton v Johnson* (1848) 15 Sim 352.

6 *Onslow v -* (1809) 16 Ves 173.

7 As to an injunction to restrain a tenant in relation to cropping and the disposal of produce see the Agricultural Holdings Act 1986 s 15; and PARA 344.

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### **K. RIGHTS IN RESPECT OF TILLAGES AND CROPS ON QUITTING HOLDINGS**

#### **363. Compensation where no right to take crops.**

If the tenant of an agricultural holding governed by the Agricultural Holdings Act 1986 has no right to sell or remove from the holding crops or produce grown on the holding in the last year of tenancy he may be entitled to claim statutory compensation for them from his landlord<sup>1</sup>.

1 See the Agricultural Holdings Act 1986 s 65(1), Sch 8 para 7; and PARA 433. The property in hay and straw, which the tenant is prohibited by s 15 (see PARA 344) from removing or selling after notice to terminate the tenancy, passes to the landlord by operation of law on the tenant's quitting the holding: *Thomas v National Farmers Union Mutual Insurance Society Ltd* [1961] 1 All ER 363, [1961] 1 WLR 386.



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### **364. Tenant right generally.**

'Tenant right' is a term used to express the right of the tenant to take or receive after the determination of his tenancy the benefit of the labour and capital expended by him in cleaning, tilling and sowing the land during his tenancy, which he would otherwise lose by the determination of the tenancy<sup>1</sup>. In the Agricultural Holdings Act 1986 the expression 'tenant right matters' is used to describe specified matters<sup>2</sup> for which compensation may be payable under the Act, except in the case of a tenant who entered into occupation of the holding before 1 March 1948<sup>3</sup>, and who does not elect that those provisions should apply to him<sup>4</sup>. Such a tenant is excluded from the general prohibition on the payment of compensation by custom where the matter in question is covered by statute<sup>5</sup>.

At common law an assignment by an agricultural tenant of all his goods and effects on the holding, and 'all his estate and interest thereon and therein', comprises the tenant right or tillages on the holding<sup>6</sup>; and an assignment by a tenant of all his goods and effects, etc, and 'all his tenant right and interest yet to come and unexpired in and to the farms and premises', passes the tenant's interest in crops grown in future years, including away-going crops<sup>7</sup>.

1 Tenant right does not usually include permanent improvements as these are not the subject of compensation by the custom of the country with certain exceptions, eg in Lincolnshire. It includes such things as growing or severed crops or produce left on the farm by the outgoing tenant, eg hay, straw, sometimes farmyard manure, and seeds sown, tillages, cultivations or acts of husbandry carried out by the outgoer, the benefit of which would be reaped by his successor.

2 The matters specified in the Agricultural Holdings Act 1986 s 65, Sch 8 Pt II. See generally ss 64-69; and PARA 431 et seq. As to compensation see PARA 414 et seq.

3 The date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

4 See the Agricultural Holdings Act 1986 Sch 12 para 6; and PARA 435. As to election by the tenant see further PARAS 415, 417.

5 See the Agricultural Holdings Act 1986 ss 77, 78(3); and PARAS 415, 417.

6 *Cary v Cary* (1862) 10 WR 669.

7 *Petch v Tutin* (1846) 15 M & W 110 (following *Grantham v Hawley* (1616) Hob 132 on the point that goods to come into existence at a future time are assignable by deed).

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### **365. Meaning of 'tillages'.**

Tillages<sup>1</sup> are the expenses and acts of husbandry in general, such as seeds and labour, fallows and unapplied manure<sup>2</sup>; and if the landlord accepts tillage and manure, an agreement by him to pay for it will be implied<sup>3</sup>.

1 Rights of tillage are not prejudiced by the Agricultural Holdings Act 1986, except as therein expressly provided: see s 97; and PARA 468. Tillages are, however, tenant right matters within s 65, Sch 8 para 8 (see PARA 433), for which compensation is payable under the Act, except in the case of a tenant who entered into occupation before 1 March 1948 and who does not elect that the provisions should apply to him: see PARA 364. The date mentioned above is the date on which the Agriculture Act 1947 Pt III (repealed), from which the Agricultural Holdings Act 1986 is in part derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

2 *Martin v Coulman* (1834) 4 LJB 37.

3 *Dalby v Hirst* (1819) 1 Brod & Bing 224; *Martin v Coulman* (1834) 4 LJB 37; *Hutton v Warren* (1836) 1 M & W 466. Where a tenant becomes a yearly tenant on such of the terms of a written agreement as are applicable to a yearly tenancy, these terms will include a stipulation for payment for tillages: *Brocklington v Saunders* (1864) 13 WR 46. An alternative method is for the incoming tenant to enter to plough and sow during the last year of the expiring tenancy: see *Milner v Jordan* (1846) 8 QB 615.

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### **366. Incidence of liability for payment.**

Where the landlord is liable to pay an outgoing tenant for tillages, etc, the liability attaches to the landlord's interest in the land, and devolves upon the person who, when the payment becomes due, is then in receipt, or entitled to receipt, of the rent<sup>1</sup>.

A vendor who, after the contract for sale but before completion, pays the outgoing tenant's valuation is entitled, in the absence of a stipulation to the contrary, to be reimbursed by the purchaser<sup>2</sup>; and a purchaser of land subject to the terms of an existing tenancy is deemed to have notice of the tenant's claim to compensation under the Agricultural Holdings Act 1986<sup>3</sup>. The 'outgoing tenant's valuation' means such sum as is found to be payable by the landlord to the tenant after balancing any payment due by the tenant to the landlord for dilapidations, and any payment due from the landlord to the tenant in respect of tenant right and so forth<sup>4</sup>.

An alleged custom that the outgoing tenant should look to the incoming tenant, to the exclusion of the landlord's liability, for payment for seeds, tillages, etc, is unreasonable, and cannot be supported<sup>5</sup>, but the incoming tenant may become liable to the outgoing tenant by express or tacit agreement<sup>6</sup>.

A tenant is not entitled to be paid for tillages, etc, if he quits the holding before the due determination of the tenancy<sup>7</sup>; but, if a contract of tenancy for a term of years is determinable by notice at the expiry of a lesser period, the tenant's rights are preserved on his quitting after due notice at the earlier date<sup>8</sup>. The trustee of a bankrupt tenant who disclaims is not entitled to compensation for tenant right<sup>9</sup>.

1 *Mansel v Norton* (1883) 22 ChD 769, CA; *Faviell v Gaskoin* (1852) 7 Exch 273; *Womersley v Dally* (1857) 26 LJ Ex 219. These cases deal with customary compensation. In cases of compensation under the Agricultural Holdings Act 1986 the same result follows from the definition of 'landlord' in s 96(1) (see PARA 323 note 7).

2 *Bennett v Stone* [1902] 1 Ch 226, CA.

3 *Re Earl of Derby and Fergusson's Contract* [1912] 1 Ch 479. See also *Dale v Hatfield Chase Corp* [1922] 2 KB 282, CA. These cases were decided under corresponding provisions of the Agricultural Holdings Act 1948. As to the tenant's right, until he has notice of the sale, to continue to serve documents on the vendor, see the Agricultural Holdings Act 1986 s 93(5); and PARA 328 note 4.

4 *Oades v Spafford* [1948] 2 KB 74, [1948] 1 All ER 607, CA (applying *Dalton v Pickard* (1911) [1926] 2 KB 545n, CA).

5 *Bradburn v Foley* (1878) 3 CPD 129.

6 *Bradburn v Foley* (1878) 3 CPD 129; *Codd v Brown* (1867) 15 LT 536; *Stafford v Gardner* (1872) LR 7 CP 242; and see *Sucksmith v Wilson* (1866) 4 F & F 1083. Such an agreement does not, however, affect any existing rights of the landlord: *Petrie v Daniel* (1804) 1 Smith KB 199; *Stafford v Gardner*; *Re Wilson, ex p Lord Hastings* (1893) 62 LJQB 628.

7 *Whittaker v Barker* (1832) 1 Cr & M 113; *England v Shearburn* (1884) 52 LT 22. See also *Marquis of Breadalbane v Stewart* [1904] AC 217, HL.

8 *Bevan v Chambers* (1896) 12 TLR 417.

9 *Re Wadsley, Bettinson's Representative v Trustee* (1925) 94 LJ Ch 215.

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### **367. Rights to away-going crops under custom or agreement.**

The tenant may also, either by custom or agreement<sup>1</sup>, have the right to the benefit of work which has been done, but has not become productive during the last year of the term; thus he may have the right to sell or take the away-going crops himself<sup>2</sup>. Apart from such custom or agreement, the tenant must at the end of the term give up possession of the farm with all growing crops<sup>3</sup>. A custom as to any of these matters is excluded by an express agreement which is inconsistent with it<sup>4</sup>.

Where a Lady Day tenancy<sup>5</sup> is prematurely determined by a judicial proceeding, such as the award of an arbitrator, the custom that the tenant should have an away-going crop has no operation<sup>6</sup>.

1 Rights to away-going crops are not prejudiced by the Agricultural Holdings Act 1986 except as therein expressly provided: see s 97; and PARA 468. Crops or produce which the tenant has a right to sell or remove are not the subject of a statutory claim for compensation: see s 65, Sch 8 para 7; and PARAS 433, 368.

2 *Wigglesworth v Dallison* (1779) 1 Doug KB 201.

3 *Caldecott v Smythies* (1837) 7 C & P 808.

4 Thus a custom for the tenant to have away-going crops is excluded by an agreement as to such crops: *Boraston v Green* (1812) 16 East 71. As to custom to pay for manure see *Clarke v Roystone* (1845) 13 M & W 752.

5 As to commencement and time of entry when determined by the custom of the country see PARA 352 note 4.

6 *Thorpe v Eyre* (1834) 1 Ad & El 926; and see *Re Wadsley, Bettinson's Representative v Trustee* (1925) 94 LJ Ch 215 (bankruptcy: disclaimer by trustee).

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### 368. Entry to take away-going crops.

A clause in a tenancy agreement entitling the tenant to take an away-going crop does not entitle the tenant to retain possession of any part of the land against the landlord after the determination of the tenancy, but imports a licence to the tenant to enter the land for the purpose of taking the crop<sup>1</sup>. Where, however, custom applies to the tenancy and the tenant is entitled by custom to the away-going crop and is bound to repair fences, he may be entitled also to actual possession of the land on which the crop is growing until the crop is carried away<sup>2</sup>. By custom, if custom applies to the tenancy, a tenant may also be entitled to leave his away-going crop in the barn of the farm after he has quitted the premises<sup>3</sup>.

Where custom applies to the tenancy trespass will not lie by the landlord or incoming tenant against the outgoing tenant for taking an away-going crop according to the custom of the country, even though the outgoing tenant has committed a breach of covenant in cropping too much of the land and not manuring it<sup>4</sup>.

1 *Strickland v Maxwell* (1834) 2 Cr & M 539.

2 *Griffiths v Puleston* (1844) 13 M & W 358. This does not prevent recovery of possession of the part of the land to which the privilege does not extend: *Doe d Waters v Houghton* (1827) 1 Man & Ry KB 208.

3 *Beavan v Delahay* (1788) 1 Hy Bl 5; *Lewis v Harris* (1778) 1 Hy Bl 7n.

4 *Boraston v Green* (1812) 16 East 71; and see *Griffiths v Tombs* (1833) 7 C & P 810, where, however, the overcropping was on oral permission from the landlord.

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### 369. Emblements.

At common law<sup>1</sup> a tenant holding for an uncertain interest<sup>2</sup>, whose interest determines otherwise than by or in consequence of his own act<sup>3</sup>, has the right, under the name of emblements, to enter upon the land after determination to cut and carry away those crops<sup>4</sup> that normally repay within the year<sup>5</sup> the labour by which they are produced<sup>6</sup>.

1 As to the statutory right to an extended tenancy in place of emblements conferred by the Agricultural Holdings Act 1986 s 21 see PARA 351. Section 97 (see PARA 468) preserves the common law right in cases to which s 21 does not apply.

2 This includes a tenancy from year to year: *Kingsbury v Collins and Elmes* (1827) 4 Bing 202 at 207; *Graves v Weld* (1833) 5 B & Ad 105 at 114.

3 Eg by forfeiture for breach of covenant, or by resignation of a benefice: Com Dig tit 'Biens' G2; *Bulwer v Bulwer* (1819) 2 B & Ald 470; *Oland's Case* (1602) 5 Co Rep 116a; *Nicholas v Simonds* (1625) 2 Roll Rep 468; and see *Davis v Eyton* (1830) 7 Bing 154. No right to emblements arises where a tenancy at will is determined by the tenant: Co Litt 68 cited in *Kingsbury v Collins and Elmes* (1827) 4 Bing 202 at 207.

4 Eg grain crops, roots, clover, potatoes and hops: Co Litt 55b; *Latham v Atwood* (1638) Cro Car 515; *Evans v Roberts* (1826) 5 B & C 829 at 832; *Graves v Weld* (1833) 5 B & Ad 105 at 119; *Haines v Welch and Marriott* (1868) LR 4 CP 91.

5 *Graves v Weld* (1833) 5 B & Ad 105 at 118.

6 Shep Touch 244; 2 Bl Com 123; and see *Hayling v Okey* (1853) 8 Exch 531; *Kingsbury v Collins and Elmes* (1827) 4 Bing 202. The right to emblements is personal property and not an interest in land: Co Litt 55b; *Hallen v Runder* (1834) 1 Cr M & R 266 per Parke B (citing *Mayfield v Wadsley* (1824) 3 B & C 357).

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### 370. Growing crops as chattels.

A sale of growing crops may be a sale either of an interest in land or of chattels, according to whether it is a sale of something attached to the soil and growing or a sale of the severed crop<sup>1</sup>. If the sale is of the crop when growing, it may nevertheless be a sale of chattels if the crop is *fructus industriales* (that is, produced by man's labour), emblements, or if the agreement obliges the buyer to sever the crop prior to sale<sup>2</sup>.

A contract for the sale of *fructus industriales* while growing, whether they are in a state of maturity or have still to derive nutriment from the land in order to bring them to that state, is not a contract for the sale of any interest in land, but merely for the sale of goods<sup>3</sup>. There is equally no sale of an interest in land when the owner of the soil sells what is on the land, whether natural produce, such as timber, grass or apples, or *fructus industriales*, on the terms that he will cut or sever them from the land and deliver them to the purchaser<sup>4</sup>.

On these principles it has been held that the sale of a growing crop of wheat<sup>5</sup>, of a crop of growing corn and the eatage of the stubble afterwards together with some growing potatoes and whatever lay grass was in the fields<sup>6</sup>, of a crop of potatoes which had matured<sup>7</sup>, and of a crop of growing potatoes<sup>8</sup>, were all sales of chattels only.

1 The caselaw on this matter is not entirely consistent but the statement in the text appears to be the principle. 'Emblements', industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale are included in the term 'goods' as defined by the Sale of Goods Act 1979 s 61(1); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) para 30. As to emblements see PARA 369.

2 The distinction between *fructus industriales* and *fructus naturales* is discussed in *Saunders (Inspector of Taxes) v Pilcher* [1949] 2 All ER 1097 at 1104-1105, CA, per Jenkins LJ, where he described the former as being 'those crops which, broadly speaking, are produced in the year by the labour of the year' and the latter as 'crops such as fruit growing on trees, where the productive act is the planting of the trees, and where the fruit is produced by the trees year after year, primarily as the result of that initial productive act'.

3 *Duppa v Mayo* (1669) 1 Wms Saund 275 at 277; *Marshall v Green* (1875) 1 CPD 35 at 39.

4 *Washbourn v Burrows* (1847) 1 Exch 107. As to sales which are sales of an interest in land see PARA 583.

5 *Mayfield v Wadsley* (1824) 3 B & C 357.

6 *Jones v Flint* (1839) 10 Ad & El 753.

7 *Parker v Staniland* (1809) 11 East 362; *Warwick v Bruce* (1813) 2 M & S 205.

8 *Evans v Roberts* (1826) 5 B & C 829; *Sainsbury v Matthews* (1838) 4 M & W 343.

## UPDATE

### 370 Growing crops as chattels

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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### 371. Growing crops as an interest in land.

Notwithstanding the principles previously enumerated<sup>1</sup>, a sale of growing grass for the purpose of being mown and made into hay by the purchaser, a sale of hops not yet in bine, a sale of growing turnips, no time being stipulated for removing them, and a contract with an incoming tenant to take and pay for growing crops and tillages in consideration of letting him a farm, have all been held to be sales of an interest in land<sup>2</sup>.

The initial labour of planting a fruit tree does not render all the fruit that in subsequent years may grow thereon the produce of man's labour, and the sale of fruit growing on a tree, without provision for its severance from the tree before the property passes, is accordingly a sale of an interest in land<sup>3</sup>. An unconditional sale of underwood or growing trees to be cut by the purchaser is a sale of an interest in land<sup>4</sup>; but not when it is stipulated that they be removed as soon as possible by the purchaser<sup>5</sup> or when they are sold by cubic measure with a view to immediate felling and removal<sup>6</sup>.

1 See PARA 370.

2 See *Crosby v Wadsworth* (1805) 6 East 602; *Carrington v Roots* (1837) 2 M & W 248; *Waddington v Bristow* (1801) 2 Bos & P 452 (although doubted in *Rodwell v Phillips* (1842) 9 M & W 501 at 503); *Emmerson v Heelis* (1809) 2 Taunt 38 (although criticised in *Evans v Roberts* (1826) 5 B & C 829 at 833; and in *Jones v Flint* (1839) 10 Ad & El 753 at 759); *Earl of Falmouth v Thomas* (1832) 1 Cr & M 89. In order to be effective, a sale of crops constituting an interest in land will have to comply with the formalities prescribed by the Law of Property (Miscellaneous Provisions) Act 1989: see s 2(1); and **SALE OF LAND** vol 42 (Reissue) PARA 29 et seq.

3 See *Saunders (Inspector of Taxes) v Pilcher* [1949] 2 All ER 1097 at 1104, CA, per Jenkins LJ (explaining why fruit on a tree is not *fructus industriales*) (see PARA 370 note 2); *Rodwell v Phillips* (1842) 9 M & W 501.

4 *Scorell v Boxall* (1827) 1 Y & J 396.

5 *Marshall v Green* (1875) 1 CPD 35.

6 *Smith v Surman* (1829) 9 B & C 561.

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### 372. Right to exclusive possession on sale of a growing crop.

Where a crop of growing grass in a close is sold for the purpose of being mown and made into hay by the purchaser, the purchaser acquires a right to the exclusive possession of the close for that purpose, and may maintain trespass against any person entering the close and taking the grass even with the assent of the vendor<sup>1</sup>, and the purchaser of a growing crop has exclusive possession and may sue a trespasser notwithstanding that he is bound to consume part of the crop on the land<sup>2</sup>.

The grant of fruit growing on a tree implies an undertaking by the grantor not to destroy the tree before the fruit is gathered<sup>3</sup>.

<sup>1</sup> *Crosby v Wadsworth* (1805) 6 East 602.

<sup>2</sup> *Wellaway v Courtier* [1918] 1 KB 200.

<sup>3</sup> *See M'Intyre v Belcher* (1863) 14 CBNS 654 at 665 per Willes J.

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### (v) Notice to Quit

#### A. LENGTH OF NOTICE TO QUIT

### 373. Requirement of 12 months' notice.

Subject to the exceptions listed below, a notice to quit an agricultural holding<sup>1</sup> or part of a holding is invalid if it purports to terminate the tenancy before the expiry of 12 months from the end of the then current year of the tenancy, notwithstanding any provision to the contrary in the contract of tenancy<sup>2</sup>. This provision does not apply:

- 88 (1) where the tenant<sup>3</sup> is insolvent<sup>4</sup>;
- 89 (2) to a notice given pursuant to a provision in the contract of tenancy authorising the resumption of possession of the holding or some part of it for some specified purpose other than the use of the land for agriculture<sup>5</sup>;
- 90 (3) to a notice given by a tenant to a sub-tenant<sup>6</sup>;
- 91 (4) where the tenancy is one which by virtue of the Law of Property Act 1925<sup>7</sup> takes effect as such a term of years as is mentioned in that Act<sup>8</sup>;
- 92 (5) where following a rent review of an agricultural holding<sup>9</sup> the arbitrator determines that the rent payable in respect of the holding must be increased and a notice to quit the holding is given by the tenant at least six months before it purports to take effect (provided that the notice to quit purports to terminate the tenancy at the end of the year of the tenancy beginning with the date as from which the rent increase is effective)<sup>10</sup>;
- 93 (6) where the tenancy of an agricultural holding is of a specified category entered into before 25 March 1947<sup>11</sup>; and
- 94 (7) where the arbitrator has specified a date for the termination of the tenancy in the event of the tenant's failure to do work under a notice to remedy or where there has been an extension of time under a notice to remedy<sup>12</sup>.

Where the agricultural land tribunal<sup>13</sup> has granted a certificate of bad husbandry<sup>14</sup> it may specify in the certificate a minimum period of notice for termination of the tenancy (being not less than two months)<sup>15</sup> and direct the application of that period instead of the period normally required<sup>16</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323. As to the service of notices to quit see PARA 328 note 4. The Protection from Eviction Act 1977 s 5 (validity of notices to quit: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 214) will not apply even though a tenancy of an agricultural holding includes a dwelling house: see *National Trust for Places of Historic Interest or Natural Beauty v Knipe* [1997] 4 All ER 627, [1998] 1 WLR 230, CA.

2 Agricultural Holdings Act 1986 s 25(1). As to the meaning of 'contract of tenancy' see PARA 325. This provision applies to a notice exercising an option to determine a fixed term before its normal expiry (*Edell v Dulieu* [1924] AC 38, HL); and also to a notice given by as well as to a tenant (*Flather v Hood* (1928) 44 TLR 698). A notice which is invalid under this provision may still be effective if the tenant actually quits in pursuance of it: *Thomas v National Farmers Union Mutual Insurance Society Ltd* [1961] 1 All ER 363, [1961] 1 WLR 386. A landlord or a tenant served with a notice to quit of less than the statutory length may waive his rights: *Elsden v Pick* [1980] 3 All ER 235, [1980] 1 WLR 898, CA. A notice to quit of the correct length is invalid if served before the commencement of the tenancy: *Lower v Sorrell* [1963] 1 QB 959, [1962] 3 All ER 1074, CA. The addition of a fetter to the statutory length was held to be valid in *Re Midland Rly Co's Agreement, Charles Clay & Sons Ltd v British Railways Board* [1971] Ch 725, [1971] 1 All ER 1007, CA (overruled on other grounds by *Prudential Assurance Co Ltd v London Residuary Body* [1992] 2 AC 386, [1992] 3 All ER 504, HL (a lease, including a periodic tenancy, must be of certain duration)).

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Agricultural Holdings Act 1986 s 25(2)(a). A tenant is insolvent if:

35 (1) he has been adjudged bankrupt or has made a composition or arrangement with his creditors (s 96(2)(a)); or

36 (2) where the tenant is a body corporate, a winding-up order has been made with respect to it, or a resolution for voluntary winding-up has been made with respect to it (other than a resolution passed solely for the purpose of its reconstruction or of its amalgamation with another body corporate) (s 96(2)(b)).

5 Agricultural Holdings Act 1986 s 25(2)(b). As to 'agriculture' and the use of the land for agriculture see PARA 324. A provision in the contract authorising the resumption of possession for any non-agricultural purpose is a 'specified purpose': *Paddock Investments Ltd v Lory* [1975] 2 EGLR 5, CA. Such a provision will be wholly invalid if it does not provide sufficient time to enable compensation claims to be made within the time limits specified in the Act: *Re Disraeli's Agreement, Cleasby v Park Estate (Hughenden) Ltd* [1939] Ch 382, [1938] 4 All ER 658; *Parry v Million Pigs Ltd* (1980) 260 Estates Gazette 281.

6 Agricultural Holdings Act 1986 s 25(2)(c).

7 In the Law of Property Act 1925 s 149(6) (lease for life or lives or for a term determinable with life or lives or on the marriage of, or formation of a civil partnership by, the lessee: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 240).

8 Agricultural Holdings Act 1986 s 25(2)(d).

9 In on a reference under the Agricultural Holdings Act 1986 s 12 (see PARA 338).

10 Agricultural Holdings Act 1986 s 25(3). Such a notice to quit is not invalid by virtue of any term of the contract of tenancy requiring a longer period of notice to terminate the tenancy: s 25(5).

11 Agricultural Holdings Act 1986 Sch 12 para 4 (amended by SI 2003/1615). The specified categories are:

37 (1) notice given by or on behalf of the Secretary of State where the land is required for naval, military or air force purposes (Agricultural Holdings Act 1986 Sch 12 para 4(1)(a)); and

38 (2) notice given by a corporation carrying on a railway, dock, canal, water or other undertaking (Sch 12 para 4(1)(b)).



- 12 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, arts 7, 15; and PARAS 389, 393.
- 13 As to agricultural land tribunals see PARAS 670-673.
- 14 As to certificates of bad husbandry see PARA 345.
- 15 Agricultural Holdings Act 1986 s 25(4)(a). Such a notice to quit is not invalid either by virtue of any term of the contract of tenancy requiring a longer period of notice to terminate the tenancy or by reason of the tenancy terminating at a date other than the end of a year of the tenancy: s 25(5).
- 16 Agricultural Holdings Act 1986 s 25(4)(b).

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## **B. RESTRICTION ON OPERATION OF NOTICES TO QUIT**

### **374. Restriction by counter-notice.**

Where a notice to quit the whole or part of an agricultural holding<sup>1</sup> is given to the tenant<sup>2</sup>, and he serves a counter-notice in writing on the landlord<sup>3</sup> not later than one month from the giving of the notice to quit<sup>4</sup>, then, subject to certain exceptions<sup>5</sup>, the notice to quit is ineffective unless the agricultural land tribunal<sup>6</sup> consents to its operation<sup>7</sup>. The counter-notice must require that these provisions<sup>8</sup> apply to the notice to quit<sup>9</sup>.

- 1 As to the meaning of 'agricultural holding' see PARA 323. As to notice to quit part of a holding see PARA 395.
- 2 Agricultural Holdings Act 1986 s 26(1)(a). As to the meaning of 'tenant' see PARA 323 note 5. As to the operation of a notice to quit given to a sub-tenant as a consequence of the service of notice on a tenant see PARA 399.
- 3 As to the meaning of 'landlord' see PARA 323 note 7.
- 4 Agricultural Holdings Act 1986 s 26(1)(b). As to the service of notices see PARA 328 note 4.
- 5 In general the application of this provision is excluded in relation to any of the Cases A-H set out in the Agricultural Holdings Act 1986 s 26(2), Sch 3: see further PARAS 377-384. In addition, s 26(1) does not apply where notice to quit a holding or part of a holding is given to a sub-tenant by a tenant who has himself been given notice to quit that holding or part and the fact that the tenant has been given such notice is stated in the notice given to the sub-tenant (Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 16(1)); in that case the notice given to the sub-tenant is effective only if the notice given to the tenant by the landlord has effect (art 16(2)).
- 6 As to agricultural land tribunals see PARAS 670-673.
- 7 Agricultural Holdings Act 1986 s 26(1). As to the giving and withholding of consent to the operation of notices to quit see PARA 375.
- 8 I.e. the provision of the Agricultural Holdings Act 1986 s 26(1).
- 9 Agricultural Holdings Act 1986 s 26(1)(b). Counter-notices are not to be strictly construed, and one which erroneously referred to the equivalent provision of repealed legislation was held valid in *Ward v Scott* [1950] WN 76. There must, however, be a clear intention to invoke the statute, and a mere threat to 'appeal' is not sufficient; a technical defect which does not mislead will not invalidate the notice: *Mountford v Hodgkinson* [1956] 2 All ER 17, [1956] 1 WLR 422, CA; *Frankland v Capstick* [1959] 1 All ER 209, [1959] 1 WLR 205, CA.

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### **375. Giving or withholding of consent by the agricultural land tribunal.**

The agricultural land tribunal<sup>1</sup> must consent to the operation of a notice to quit the whole or part of an agricultural holding<sup>2</sup> if, but only if, it is satisfied as to one or more of the matters listed below specified in the landlord's application<sup>3</sup>, unless it appears to it in all the circumstances that a fair and reasonable landlord<sup>4</sup> would not insist on possession, in which case it must withhold consent<sup>5</sup>. The matters as to which the tribunal must be satisfied are:

- 95 (1) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of good husbandry<sup>6</sup> as respects the land to which the notice relates, treated as a separate unit<sup>7</sup>;
- 96 (2) that the carrying out of that purpose is desirable in the interests of the sound management of the estate of which the land to which the notice relates forms part or which that land constitutes<sup>8</sup>;
- 97 (3) that the carrying out of that purpose is desirable for the purposes of agricultural<sup>9</sup> research, education, experiment or demonstration, or for the purposes of the enactments relating to smallholdings or allotments<sup>10</sup>;
- 98 (4) that greater hardship would be caused by the withholding than by the giving of consent<sup>11</sup>; or
- 99 (5) that the landlord proposes to terminate the tenancy for the purpose of a use other than for agriculture<sup>12</sup> not falling within Case B (non-agricultural use)<sup>13</sup>.

The agricultural land tribunal may attach conditions to its consent to the operation of a notice to quit to ensure that the land is in fact used for the purposes for which the landlord proposes to terminate the tenancy<sup>14</sup>, but must vary or revoke any condition, if satisfied on an application by the landlord that by reason of change of circumstances or otherwise the variation or revocation ought to be made<sup>15</sup>. Where such a condition has been imposed and it is proved on application to the tribunal on behalf of the Crown that the landlord has failed to comply with it within the time allowed or has acted in contravention of it, the tribunal may by order impose a penalty on the landlord of an amount not exceeding two years' rent of the holding at the rate payable immediately prior to the termination of the tenancy, or, where the notice related to part only of the holding, the proportion of that rent which the tribunal considers to be attributable to that part<sup>16</sup>. In such proceedings the tribunal may order the payment by any party of such sum as it considers a reasonable contribution towards costs<sup>17</sup>. A penalty imposed by the tribunal is a debt due to the Crown and, when recovered, must be paid into the Consolidated Fund<sup>18</sup>. Orders made by the tribunal for the imposition on the landlord of a penalty or for the payment of costs are enforceable in the same manner as a judgment or order of the county court to the like effect<sup>19</sup>.

1 As to agricultural land tribunals see PARAS 670-673.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 Agricultural Holdings Act 1986 s 27(1).

4 As to the meaning of 'landlord' see PARA 323 note 7.

5 Agricultural Holdings Act 1986 s 27(2); and see *Evans v Roper* [1960] 2 All ER 507, [1960] 1 WLR 814, DC; *Cooke v Talbot* (1977) 243 Estates Gazette 831.

6 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

7 Agricultural Holdings Act 1986 s 27(3)(a). The tribunal is required to make a comparison between the future use of the land proposed by the landlord and the use of the land by the tenant: *Davies v Price* [1958] 1 All ER 671, [1958] 1 WLR 434, CA.

8 Agricultural Holdings Act 1986 s 27(3)(b). In considering what is 'sound management of the estate' the whole and every part of the estate must be taken into consideration: *Evans v Roper* [1960] 2 All ER 507, [1960] 1 WLR 814, DC. In order to come within this ground, the purpose must be one which relates to the physical management of the land, and not one which will merely benefit the landlord financially: see *National Coal Board v Naylor* [1972] 1 All ER 1153, [1972] 1 WLR 908, DC. Cf *Purser v Bailey* [1967] 2 QB 500, sub nom *Bailey v Purser* [1967] 2 All ER 189, CA (landlord's personal financial position is not relevant under this head).

9 As to the meaning of 'agricultural' see PARA 324.

10 Agricultural Holdings Act 1986 s 27(3)(c), (d). As to the enactments relating to smallholdings and allotments see PARA 488 et seq.

11 Agricultural Holdings Act 1986 s 27(3)(e). The financial result for the respective parties estimated to flow from the granting or withholding of consent may be the largest single deciding factor but is not the only factor: *Purser v Bailey* [1967] 2 QB 500, sub nom *Bailey v Purser* [1967] 2 All ER 189, CA. The tribunal is entitled to consider hardship to all who may be affected, and to consider hardship notwithstanding the fact that it may have other contributory causes. Hardship to third parties will be taken into account but only in so far as hardship to those parties is hardship to the landlord or tenant: *Harte v Frampton* [1948] 1 KB 73, [1947] 2 All ER 604.

12 As to the meaning of 'agriculture' see PARA 324.

13 Agricultural Holdings Act 1986 s 27(3)(f). As to Case B see PARA 378.

14 Agricultural Holdings Act 1986 s 27(4). A condition requiring the grant to the tenant by the landlord of a new lease of part of the land to which the notice to quit relates is not a condition which the tribunal has power to attach by virtue of this provision: *R v Agricultural Land Tribunal (South-Eastern Area), ex p Boucher* (1952) 159 Estates Gazette 192.

15 Agricultural Holdings Act 1986 s 27(5).

16 Agricultural Holdings Act 1986 s 27(6). This is the only remedy for a breach of a condition and the tenant cannot refuse to comply with the notice to quit by reason of such breach: *Martin Smith v Smale* [1954] 1 All ER 237, [1954] 1 WLR 247, CA.

17 Agricultural Holdings Act 1986 s 27(7).

18 Agricultural Holdings Act 1986 s 27(8).

19 Agricultural Holdings Act 1986 s 27(9).

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### **C. NOTICES TO QUIT WHERE COUNTER-NOTICE PROCEDURE UNAVAILABLE**

#### **376. Exclusion of tenant's right to serve a counter-notice.**

The provisions enabling a tenant<sup>1</sup> to serve a counter-notice<sup>2</sup> and thereby render the landlord's<sup>3</sup> notice to quit ineffective without the consent of the agricultural land tribunal<sup>4</sup> are excluded in eight specified Cases<sup>5</sup> and a landlord serving notice in reliance upon one or more of the reasons set out in those cases need only establish the validity of the reasons stated in the notice, provided that the case on which he relies is unambiguously identifiable<sup>6</sup>. There is provision under which the tenant may contest questions arising under notices to quit in certain of those cases<sup>7</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 See PARAS 374-375.

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 As to agricultural land tribunals see PARAS 670-673.

5 Agricultural Holdings Act 1986 s 26(2). The eight exceptions are Cases A-H set out in Sch 3 Pt I: see PARAS 377-384.

6 *Budge v Hicks* [1951] 2 KB 335, [1951] 2 All ER 245, CA. It must also be clear whether the notice relies on one of those cases or is a notice to which a counter-notice may be served: *Cowan v Wrayford* [1953] 2 All ER 1138, [1953] 1 WLR 1340, CA; *Mills v Edwards* [1971] 1 QB 379, [1971] 1 All ER 922, CA.

7 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, arts 9, 10; and PARA 391 et seq.

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### **377. Case A: smallholdings.**

Case A applies to a holding let on or after 12 September 1984<sup>1</sup> as a smallholding by a smallholdings authority<sup>2</sup>, the Secretary of State or the Welsh Ministers<sup>3</sup> in pursuance of statutory provisions relating to smallholdings<sup>4</sup> where:

- 100 (1) the tenant<sup>5</sup> has attained the age of 65<sup>6</sup>;
- 101 (2) if the result of the notice to quit taking effect would be to deprive the tenant of living accommodation occupied by him under the tenancy, suitable alternative accommodation is or will be available for him when the notice takes effect<sup>7</sup>; and
- 102 (3) the instrument under which the tenancy was granted contains an acknowledgment signed by the tenant that the tenancy is subject to the provisions of Case A<sup>8</sup>,

and it is stated in the notice to quit that it is given for that reason<sup>9</sup>. The reasons stated may be contested by arbitration<sup>10</sup>.

A certificate of the housing authority that it will provide suitable alternative accommodation by a specified date is conclusive of that question<sup>11</sup>. In the absence of such a certificate accommodation will be deemed to be suitable if it falls within one of several categories of tenancy providing the tenant with security of tenure<sup>12</sup>.

The accommodation must be reasonably suitable to the tenant's family as regards proximity to place of work and either:

- 103 (a) similar as regards rental and extent to dwelling houses<sup>13</sup> provided in the neighbourhood by a housing authority to meet needs similar to those of the tenant and his family<sup>14</sup>; or
- 104 (b) reasonably suitable to the means of the tenant and the needs of him and his family as regards extent and character<sup>15</sup>.

Similar furniture to that provided by the landlord<sup>16</sup> or reasonably suitable furniture must be provided in the alternative accommodation<sup>17</sup>. Accommodation is not suitable to the tenant and his family if their occupation of it would result in its being an overcrowded dwelling house<sup>18</sup>.

1 The date on which the Agricultural Holdings Act 1984, from which the Agricultural Holdings Act 1986 Sch 3 (see the text and notes 2-18; and PARAS 378-384) derives, came into force: see the Agricultural Holdings Act 1984 s 11(2) (repealed).

2 As to smallholdings authorities see PARAS 650-653.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 The Agriculture Act 1970 Pt III (ss 37-65) (see PARA 488 et seq).

5 As to the meaning of 'tenant' see PARA 323 note 5.

6 Agricultural Holdings Act 1986 s 26(2), Sch 3 Pt I Case A(a).

7 Agricultural Holdings Act 1986 Sch 3 Pt I Case A(b). As to the service of notices see PARA 328 note 4.

8 Agricultural Holdings Act 1986 Sch 3 Pt I Case A(c). Alternatively, the instrument under which the tenancy is granted may contain an acknowledgment signed by the tenant that the tenancy is subject to the provisions of the Agricultural Holdings (Notices to Quit) Act 1977 s 2(3), Case I (repealed), which was the precursor of Case A in the Agricultural Holdings Act 1986.

9 Agricultural Holdings Act 1986 Sch 3 Pt I Case A.

10 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9; and PARA 391. As to arbitrations generally see PARA 469 et seq.

11 Agricultural Holdings Act 1986 s 26(3), Sch 3 Pt II paras 1, 2. Any document purporting to be a certificate of a housing authority named in it issued for the purposes of Sch 3 and to be signed by the proper officer of the authority, must be received in evidence and, unless the contrary is shown, deemed to be such a certificate without further proof: Sch 3 Pt II para 6.

12 Agricultural Holdings Act 1986 Sch 3 Pt II para 3 (amended by the Housing Act 1988 s 140, Sch 17 para 69).

13 A 'dwelling house' may be a house or part of a house: Agricultural Holdings Act 1986 Sch 3 Pt II para 7(2).

14 Agricultural Holdings Act 1986 Sch 3 Pt II para 4(1)(a). For these purposes a certificate of a housing authority stating the extent of the accommodation afforded by dwelling houses provided by the authority to meet the needs of tenants with families of such number as may be specified in the certificate and the amount of the rent charged by the authority for dwelling houses affording accommodation of that extent is conclusive evidence of the facts so stated: Sch 3 Pt II para 4(2).

15 Agricultural Holdings Act 1986 Sch 3 Pt II para 4(1)(b).

16 As to the meaning of 'landlord' see PARA 323 note 7.

17 Agricultural Holdings Act 1986 Sch 3 Pt II para 4(3).

18 Agricultural Holdings Act 1986 Sch 3 Pt II para 5. An overcrowded dwelling house in this context is one which is overcrowded for the purposes of the Housing Act 1985 (see s 324; and **HOUSING** vol 22 (2006 Reissue) PARA 443): Agricultural Holdings Act 1986 Sch 3 Pt II para 5.

## UPDATE

### 377-381 Case A: smallholdings ... Case E: irremediable breach

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 378. Case B: non-agricultural use.

Case B applies where the notice to quit<sup>1</sup> is given on the ground that the land is required for a use<sup>2</sup> (other than for agriculture<sup>3</sup>):

- 105 (1) for which permission has been granted on an application under the enactments relating to town and country planning (and any enactment amending or replacing any of those Acts)<sup>4</sup>;
- 106 (2) for which permission under those enactments is granted by a general development order<sup>5</sup> by reason only of the fact that the use is authorised by a private or local Act<sup>6</sup>, an order approved by both Houses of Parliament or by the National Assembly for Wales<sup>7</sup> or an order<sup>8</sup> regarding efficiency, improvement or construction in harbours<sup>9</sup>;
- 107 (3) for which any provision contained in an Act<sup>10</sup> but not forming part of the town and country planning enactments<sup>11</sup> deems permission under those enactments to have been granted<sup>12</sup>;
- 108 (4) which any such provision deems not to constitute development for the purposes of those enactments<sup>13</sup>; or
- 109 (5) for which permission is not required under those enactments by reason only of Crown immunity<sup>14</sup>,

and that fact is stated in the notice<sup>15</sup>.

A question arising under a notice to quit falling within Case B may be contested by arbitration<sup>16</sup>.

1 As to the service of notices see PARA 328 note 4.

2 The meaning of 'use' in planning legislation should not be imported into Case B: see *Floyer-Acland v Osmond* (2000) 80 P & CR 229, [2000] 2 EGLR 1, CA. The landlord need not establish that the land is required for his own personal use: *Paddock Investments Ltd v Lory* [1975] 2 EGLR 5, CA. 'Required' involves both a firm bona fide intention to carry out development and the reasonable prospect that it will be carried out: *Paddock Investments Ltd v Lory* (approving *Jones v Gates* [1954] 1 All ER 158, [1954] 1 WLR 222, CA, on this point only). The requirement need not be exclusively by the landlord himself: *Rugby Joint Water Board v Foottit* [1973] AC 202, [1972] 1 All ER 1057, HL. Outline planning consent is sufficient: *Paddock Investments Ltd v Lory*; *Rugby Joint Water Board v Foottit*. In *John v George* (1995) 71 P & CR 375, [1996] 1 EGLR 7, CA, the landlords were estopped from serving a valid Case B notice to quit because of pre-planning permission negotiations with the tenant.

3 As to the meaning of 'agriculture' see PARA 324. A condition that after the mineral workings the land should be restored so that it was suitable for agriculture does not mean that the land is not wanted for a non-agricultural use: see *Floyer-Acland v Osmond* (2000) 80 P & CR 229, [2000] 2 EGLR 1, CA.

4 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(a) (Case B substituted by the Agricultural Holdings (Amendment) Act 1990 s 1(1), (2)). For these purposes no account is to be taken of permission which relates to the working of coal by opencast operations (Agricultural Holdings Act 1986 Sch 3 Pt II para 8(1)(b)) and which was granted subject to a restoration condition and an aftercare condition in which the use specified is agriculture or forestry (Sch 3 Pt II para 8(1)(c)). As to the meanings of 'restoration condition' and 'aftercare condition' see the Town and Country Planning Act 1990 s 336, Sch 5 para 2; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 713 (definitions applied by the Agricultural Holdings Act 1986 Sch 3 Pt II para 8(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 72)). As to the enactments relating to town and country planning see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 2 (definition applied by the Agricultural Holdings Act 1986 Sch 3 Pt II para 8A(1)(b) (Sch 3 Pt II para 8A added by the Agricultural Holdings (Amendment) Act 1990 s 1(3))).

5 'General development order' means an order under the Town and Country Planning Act 1990 s 59 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 252) which is made as a general order: Agricultural Holdings Act 1986 Sch 3 Pt II para 8A(1)(a) (as added: see note 4). In relation to anything done before the commencement of the Town and Country Planning Act 1990 Pt III (ss 55-106) (ie before 24 August 1990) see the Agricultural Holdings Act 1986 Sch 3 Pt II para 8A(2) (as so added).

6 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(b)(i) (as substituted: see note 4).

7 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(b)(ii) (as substituted: see note 4). For provisions as to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 s 162(1), Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 Is an order under the Harbours Act 1964 s 14 or s 16 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARAS 628-630, 645-646).

9 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(b)(iii) (as substituted: see note 4).

10 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(c)(i) (as substituted: see note 4).

11 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(c)(ii) (as substituted: see note 4).

12 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(c) (as substituted: see note 4).

13 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(d) (as substituted: see note 4).

14 Agricultural Holdings Act 1986 Sch 3 Pt I Case B(e) (as substituted: see note 4).

15 Agricultural Holdings Act 1986 Sch 3 Pt I Case B (as substituted: see note 4).

16 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9; and PARA 391. As to arbitrations generally see PARA 469 et seq.

## UPDATE

### 377-381 Case A: smallholdings ... Case E: irremediable breach

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **379. Case C: certificate of bad husbandry.**

Case C applies where, not more than six months before the giving of the notice to quit<sup>1</sup>, the agricultural land tribunal<sup>2</sup> granted a certificate<sup>3</sup> that the tenant<sup>4</sup> of the holding was not fulfilling his responsibilities to farm<sup>5</sup> in accordance with the rules of good husbandry<sup>6</sup>, and that fact is stated in the notice<sup>7</sup>.

For these purposes a landlord<sup>8</sup> may apply to the tribunal for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and if the tribunal is satisfied that the tenant is not fulfilling those responsibilities it must grant the certificate<sup>9</sup>. In determining whether to grant the certificate the tribunal must disregard any practice adopted by the tenant in pursuance of any provision of the contract of tenancy<sup>10</sup> or other agreement with the landlord which indicates that the object of the practice is the furtherance of:

- 110 (1) the conservation of flora or fauna or of geological or physiographical features of special interest<sup>11</sup>;
- 111 (2) the protection of buildings<sup>12</sup> or other objects of archaeological, architectural or historic interest<sup>13</sup>; or
- 112 (3) the conservation or enhancement of the natural beauty or amenity of the countryside or the promotion of its enjoyment by the public<sup>14</sup>,

and must also disregard any practice adopted by the tenant in compliance with any obligation accepted by or imposed on the tenant under statutory provisions concerning the designation of nitrate sensitive areas<sup>15</sup>.

In granting a certificate the tribunal may specify a minimum period of notice for termination of the tenancy of not less than two months, in place of the normal statutory period of notice<sup>16</sup>.

No compensation for disturbance, whether basic or additional, is payable where the operation of a counter-notice is excluded by Case C<sup>17</sup>.

1 As to the service of notices see PARA 328 note 4.

2 As to agricultural land tribunals see PARAS 670-673.

3 I.e a certificate under the Agricultural Holdings Act 1986 s 26(3), Sch 3 Pt II para 9 (see the text and notes 4-15).

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 As to the 'farming' of land see PARA 324.

6 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

7 Agricultural Holdings Act 1986 Sch 3 Pt I Case C.

8 As to the meaning of 'landlord' see PARA 323 note 7.

9 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(1).

10 As to the meaning of 'contract of tenancy' see PARA 325.



- 11 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(a).
- 12 As to the meaning of 'building' see PARA 332 note 6.
- 13 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(b).
- 14 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(c).
- 15 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(3) (added by the Water Act 1989 s 190(1), Sch 25 para 75; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 43). As to the statutory provisions concerning the designation of nitrate sensitive areas see the Water Resources Act 1991 ss 94, 95.
- 16 See the Agricultural Holdings Act 1986 s 25(4), (5); and PARA 373.
- 17 See the Agricultural Holdings Act 1986 s 61(1); and PARA 447.

## UPDATE

### 377-381 Case A: smallholdings ... Case E: irremediable breach

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 380. Case D: non-compliance with notice to pay rent due or notice to remedy a breach of the tenancy.

Case D applies where at the date of the giving of the notice to quit<sup>1</sup> the tenant<sup>2</sup> had failed to comply with a written notice served on him by the landlord<sup>3</sup>, being either a notice requiring him within two months of the service of the notice to pay any rent due in respect of the agricultural holding<sup>4</sup> to which the notice to quit relates<sup>5</sup> or a notice requiring him within a reasonable period specified in the notice to remedy<sup>6</sup> any breach by the tenant that was capable of being remedied of any term or condition of his tenancy which was not inconsistent with his responsibilities to farm<sup>7</sup> in accordance with the rules of good husbandry<sup>8</sup>, and the notice to quit states that it is given by reason of such matter<sup>9</sup>.

Where a notice in the prescribed form<sup>10</sup> requires the doing of any work of repair, maintenance or replacement, any further notice requiring the doing of any such work which is served on the tenant less than 12 months after the earlier notice must be disregarded unless the earlier notice was withdrawn with his agreement in writing<sup>11</sup>. A period of less than six months is not a reasonable period within which work may be done<sup>12</sup>. Any provision of the contract of tenancy<sup>13</sup> or other agreement with the landlord which indicates that the object of the practice is the furtherance of:

- 113 (1) the conservation of flora or fauna or of geological or physiographical features of special interest<sup>14</sup>;
- 114 (2) the protection of buildings<sup>15</sup> or other objects of archaeological, architectural or historic interest<sup>16</sup>; or
- 115 (3) the conservation or enhancement of the natural beauty or amenity of the countryside or the promotion of its enjoyment by the public<sup>17</sup>,

must be regarded as a term or condition which is not inconsistent with the tenant's responsibilities to farm in accordance with the rules of good husbandry<sup>18</sup>.

Where a notice to quit is given under Case D relying on the tenant's failure to comply with a notice to do work<sup>19</sup>, and the tenant serves on the landlord a counter-notice within one month of the notice to quit<sup>20</sup>, the notice to quit is ineffective unless the agricultural land tribunal<sup>21</sup> consents to its operation on an application by the landlord<sup>22</sup>. The tenant may question the validity of the reason stated for the giving of the notice to quit by means of a notice requiring the determination of the question by arbitration<sup>23</sup>, and in such a case a prior counter-notice is ineffective<sup>24</sup>; if, apart from this provision, the notice to quit would have effect in consequence of the arbitration, the tenant may serve such a counter-notice within one month of the delivery of the award to him<sup>25</sup>.

Questions arising on notices to quit falling within Case D may be determined by arbitration<sup>26</sup>.

1 As to the service of notices see PARA 328 note 4.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 As to the meaning of 'agricultural holding' see PARA 323.

5 Agricultural Holdings Act 1986 Sch 3 Pt I Case D(a). Such notice must be in the prescribed form: see Sch 3 Pt II para 10(1)(a); and the Agricultural Holdings (Forms of Notice to Pay Rent or to Remedy) Regulations 1987, SI 1987/711, reg 3, Form 1. Rent must actually be due at the date of the preliminary notice: *Magdalen College, Oxford v Heritage* [1974] 1 All ER 1065, [1974] 1 WLR 441, CA; *Pickard v Bishop* (1975) 31 P & CR 108; *Urwick v Taylor* (1969) 212 Estates Gazette 1257. Payment of the overdue rent after the expiry of the two months' notice to pay is not compliance with the notice and does not prevent the tenant losing the protection of security of tenure given by the Agricultural Holdings Act 1986 even though the payment is made before the service of the notice to quit: *Stoneman v Brown* [1973] 2 All ER 225, [1973] 1 WLR 459, CA.

6 In order to comply with a notice to remedy, the tenant must remedy the breach completely: *Price v Romilly* [1960] 3 All ER 429, [1960] 1 WLR 1360.

7 As to the 'farming' of land see PARA 324.

8 Agricultural Holdings Act 1986 Sch 3 Pt I Case D(b). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904. For these purposes compliance with any obligation accepted by or imposed on the tenant under the statutory provisions concerning the designation of nitrate sensitive areas (ie under the Water Resources Act 1991 ss 94, 95) is not capable of constituting a breach by the tenant of the terms or conditions of his tenancy: Agricultural Holdings Act 1986 Sch 3 Pt II para 10(3) (added by the Water Act 1989 s 190(1), Sch 25 para 75; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 43).

Notice must be in the prescribed form: see the Agricultural Holdings Act 1986 Sch 3 Pt II para 10(1)(a); and the Agricultural Holdings (Forms of Notice to Pay Rent or to Remedy) Regulations 1987, SI 1987/711, reg 4, Form 2. Different forms may be prescribed for this purpose in relation to different circumstances: Agricultural Holdings Act 1986 Sch 3 Pt II para 10(2).

9 Agricultural Holdings Act 1986 Sch 3 Pt I Case D.

10 See note 8.

11 Agricultural Holdings Act 1986 Sch 3 Pt II para 10(1)(b).

- 12 Agricultural Holdings Act 1986 Sch 3 Pt II para 10(1)(c).
- 13 As to the meaning of 'contract of tenancy' see PARA 325.
- 14 Agricultural Holdings Act 1986 Sch 3 Pt II paras 9(2)(a), 10(1)(d).
- 15 As to the meaning of 'building' see PARA 332 note 6.
- 16 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(b).
- 17 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(c).
- 18 Agricultural Holdings Act 1986 Sch 3 Pt II para 10(1)(d).
- 19 Agricultural Holdings Act 1986 s 28(1). 'Notice to do work' means a notice served on a tenant of an agricultural holding for the purposes of Case D(b) (see the text and notes 6-8), being a notice requiring the doing of any work of repair, maintenance or replacement: s 28(6). The fact that the position of a tenant who is served with a notice to remedy requiring him to do work is far stronger than that of a tenant who is served with a non-work notice to remedy (inasmuch as the former has earlier and easier recourse to statutory arbitration) does not amount to discriminatory treatment in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 14 (prohibition on discrimination: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 164): *Lancashire County Council v Taylor* [2005] EWCA Civ 284, [2005] 1 WLR 2668, [2005] 2 EGLR 17.
- 20 Agricultural Holdings Act 1986 s 28(3).
- 21 As to agricultural land tribunals see PARAS 670-673.
- 22 Agricultural Holdings Act 1986 s 28(2). The tribunal must so consent unless it appears to it, having regard to:
- 39 (1) the extent to which the tenant has failed to comply with the notice to do work (s 28(5)(a));
  - 40 (2) the consequences of his failure to comply with it in any respect (s 28(5)(b)); and
  - 41 (3) the circumstances surrounding any such failure (s 28(5)(c)),
- that a fair and reasonable landlord would not insist on possession (s 28(5)).
- 23 As to arbitrations generally see PARA 469 et seq.
- 24 Agricultural Holdings Act 1986 s 28(4)(a). In connection with proceedings under these provisions see *William Smith (Wakefield) Ltd v Parisride Ltd* [2005] EWHC 462 (Admin), [2005] 2 EGLR 22, [2005] 24 EG 180 (counter-notice for tribunal proceedings served by tenant under the Agricultural Holdings Act 1986 s 26 was not invalid under s 28(4) where it was served concurrently with notice requiring arbitration).
- 25 Agricultural Holdings Act 1986 s 28(4)(b).
- 26 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9; and PARA 391 et seq.

## UPDATE

### 377-381 Case A: smallholdings ... Case E: irremediable breach

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 381. Case E: irremediable breach.

Case E applies where at the date of the giving of the notice to quit<sup>1</sup> the landlord's<sup>2</sup> interest in the holding to which the notice relates had been materially prejudiced by the commission by the tenant<sup>3</sup> of a breach, not capable of being remedied, of any term or condition of the tenancy which was not inconsistent with the tenant's responsibilities to farm<sup>4</sup> in accordance with the rules of good husbandry<sup>5</sup>, and it is stated in the notice that it is given for that reason<sup>6</sup>.

Where the landlord is a smallholdings authority<sup>7</sup>, or is the Secretary of State or the Welsh Ministers<sup>8</sup> and the holding is on land held for the purposes of smallholdings<sup>9</sup>, then in considering whether the landlord's interests have been materially prejudiced, regard must be had to the effect of the breach not only on the holding itself but also on the carrying out of the arrangements for the letting and conduct of smallholdings<sup>10</sup>.

Any provision of the contract of tenancy<sup>11</sup> or other agreement with the landlord which indicates that the object of the practice is the furtherance of:

- 116 (1) the conservation of flora or fauna or of geological or physiographical features of special interest<sup>12</sup>;
- 117 (2) the protection of buildings<sup>13</sup> or other objects of archaeological, architectural or historic interest<sup>14</sup>; or
- 118 (3) the conservation or enhancement of the natural beauty or amenity of the countryside or the promotion of its enjoyment by the public<sup>15</sup>,

must be regarded as a term or condition which is not inconsistent with the tenant's responsibilities to farm in accordance with the rules of good husbandry<sup>16</sup>.

Questions arising on notices to quit which fall within Case E may be determined by arbitration<sup>17</sup>.

1 As to the service of notices see PARA 328 note 4.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 As to the 'farming' of land see PARA 324.

5 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

6 Agricultural Holdings Act 1986 Sch 3 Pt I Case E. For these purposes compliance with any obligation accepted by or imposed on the tenant under the statutory provisions concerning the designation of nitrate sensitive areas (ie under the Water Resources Act 1991 ss 94, 95) is not capable of constituting a breach by the tenant of the terms or conditions of his tenancy: Agricultural Holdings Act 1986 Sch 3 Pt II para 11(3) (added by the Water Act 1989 s 190(1), Sch 25 para 75; and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 43). A sub-letting in breach of covenant falls within Case E: *Scala House and District Property Co Ltd v Forbes* [1974] QB 575, [1973] 3 All ER 308, CA; *Troop v Gibson* [1986] 1 EGLR 1, (1985) 277 Estates Gazette 1134. In *Pennell v Payne* [1995] QB 192, [1995] 2 All ER 592, there was no material prejudice to the freeholder where the tenant sub-let as the sub-tenant had no security of tenure against the head landlord.

7 Agricultural Holdings Act 1986 Sch 3 Pt II para 11(1)(a). As to smallholdings authorities see PARAS 650-653.

- 8 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 9 Agricultural Holdings Act 1986 Sch 3 Pt II para 11(1)(b).
- 10 Agricultural Holdings Act 1986 Sch 3 Pt II para 11(1).
- 11 As to the meaning of 'contract of tenancy' see PARA 325.
- 12 Agricultural Holdings Act 1986 Sch 3 Pt II paras 9(2)(a), 11(2).
- 13 As to the meaning of 'building' see PARA 332 note 6.
- 14 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(b).
- 15 Agricultural Holdings Act 1986 Sch 3 Pt II para 9(2)(c).
- 16 Agricultural Holdings Act 1986 Sch 3 Pt II para 11(2).
- 17 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9; and PARA 391 et seq. As to arbitrations generally see PARA 469 et seq.

## UPDATE

### 377-381 Case A: smallholdings ... Case E: irremediable breach

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 382. Case F: insolvency.

Case F applies where at the date of the giving of the notice to quit<sup>1</sup> the tenant<sup>2</sup> was a person who had become insolvent<sup>3</sup> and it is stated in the notice that it is given for that reason<sup>4</sup>.

Questions arising on notices to quit which fall within Case F may be determined by arbitration<sup>5</sup>.

- 1 As to the service of notices see PARA 328 note 4.
- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to when a tenant is 'insolvent' for these purposes see PARA 373 note 4.
- 4 Agricultural Holdings Act 1986 Sch 3 Pt I Case F.
- 5 See the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710; and PARA 385 et seq. As to arbitrations generally see PARA 469 et seq.

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### **383. Case G: death of tenant.**

Case G applies where the notice to quit<sup>1</sup> is given following the death of a person who immediately before his death was the sole (or sole surviving) tenant<sup>2</sup> under the contract of tenancy<sup>3</sup>, and not later than the end of the period of three months beginning with the date of any relevant notice<sup>4</sup>, and it is stated in the notice to quit that it is given by reason of that person's death<sup>5</sup>.

1 As to the service of notices see PARA 328 note 4.

2 As to the meaning of 'tenant' see PARA 323 note 5. For these purposes 'tenant' does not include an executor, administrator, trustee in bankruptcy or other person deriving title from a tenant by operation of law: Agricultural Holdings Act 1986 Sch 3 Pt II para 12(a).

3 Agricultural Holdings Act 1986 Sch 3 Pt I Case G(a). As to the meaning of 'contract of tenancy' see PARA 325.

4 Agricultural Holdings Act 1986 Sch 3 Pt I Case G(b). A reference to the date of any relevant notice is to be construed as a reference to the date on which a written notice was served on the landlord by or on behalf of an executor or administrator of the tenant's estate informing the landlord of the tenant's death, or the date on which the landlord was given notice of any succession application with respect to the holding under s 39 (applications for tenancy of holding: see PARA 405) or s 41 (application to be treated as eligible: see PARA 402) or, where both of these events occur, to the date of whichever of them occurs first: Sch 3 Pt II para 12(b). As to the meaning of 'landlord' see PARA 323 note 7.

The relevant notice must be expressed in terms sufficiently clear to bring home to the ordinary landlord that the executors of the deceased are purporting to exercise the rights given to them under the Agricultural Holdings Act 1986: *Lees v Tatchell* (1990) 60 P & CR 228, [1990] 1 EGLR 10, CA.

5 Agricultural Holdings Act 1986 Sch 3 Pt I Case G.

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### **384. Case H: ministry amalgamations.**

Case H applies where the notice to quit<sup>1</sup> is given by the Secretary of State or the Welsh Ministers<sup>2</sup> and the Secretary of State certifies or the Welsh Ministers certify in writing that the notice to quit is given in order to enable him or them to use or dispose of the land for the purpose of any amalgamation<sup>3</sup> or the reshaping of any agricultural unit<sup>4</sup>, and the instrument under which the tenancy was granted contains an acknowledgement signed by the tenant<sup>5</sup> that the tenancy is subject to the provisions of Case H, its precursor<sup>6</sup> or the statutory provisions empowering the Secretary of State and the Welsh Ministers to promote amalgamations and boundary adjustments<sup>7</sup>.

1 As to the service of notices see PARA 328 note 4.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 For these purposes an 'amalgamation' is an amalgamation within the meaning of the Agriculture Act 1967 s 26(1) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338); Agricultural Holdings Act 1986 Sch 3 Pt I Case H(a).

4 Agricultural Holdings Act 1986 Sch 3 Pt I Case H(a). As to the meaning of 'agricultural unit' see PARA 324 note 7.

5 As to the meaning of 'tenant' see PARA 323 note 5.

6 The precursor of Case H was the Agricultural Holdings (Notices to Quit) Act 1977 s 2(3) Case H (repealed).

7 Agricultural Holdings Act 1986 Sch 3 Pt I Case H(b). For the statutory provisions empowering the Secretary of State and the Welsh Ministers to promote amalgamations and boundary adjustments see the Agriculture Act 1967 s 29; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1342.

## UPDATE

### 384 Case H: ministry amalgamations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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## ***D. ARBITRATION ON NOTICES TO DO WORK***

### **385. Arbitration on notice to remedy.**

Where a tenant<sup>1</sup> on whom notice to do work<sup>2</sup> has been served wishes to have determined by arbitration<sup>3</sup>:

- 119 (1) his liability under the terms or conditions of his tenancy to do any of the work specified in the notice<sup>4</sup>;
- 120 (2) the deletion from the notice of any item or part of an item of work on the ground that it is unnecessary or unjustified<sup>5</sup>; or
- 121 (3) the substitution, in the case of any item or part of an item of work, of a different method or material for the method or material which the notice would otherwise require to be followed or used<sup>6</sup>,

he must do so by service of a notice requiring the question or questions to be determined by arbitration<sup>7</sup>. The tenant's notice must be in writing and must be served on the landlord<sup>8</sup> within one month after the service on the tenant of the notice to do work<sup>9</sup>. The notice must specify, as the case may be, any items in respect of which the tenant denies liability<sup>10</sup>, any items or parts of items which the tenant claims to be unnecessary or unjustified<sup>11</sup>, and any method or material in respect of which the tenant desires a substitution to be made<sup>12</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 A 'notice to do work' means a notice to remedy which requires the doing of any work of repair, replacement or maintenance; and a 'notice to remedy' is a notice served on the tenant of an agricultural

holding for the purposes of Case D (see PARA 380) requiring him to remedy a breach of a term or condition of his tenancy: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 2(1). A notice to remedy must be in the prescribed form: see the Agricultural Holdings Act 1986 Sch 3 Pt II para 10(1)(a); and the Agricultural Holdings (Forms of Notice to Pay Rent or to Remedy) Regulations 1987, SI 1987/711, reg 4, Form 2. Different forms may be prescribed for this purpose in relation to different circumstances: Agricultural Holdings Act 1986 Sch 3 Pt II para 10(2). A notice to remedy requiring the doing of any work of repair, maintenance or replacement must be in the form prescribed by the Agricultural Holdings (Forms of Notice to Pay Rent or to Remedy) Regulations 1987, SI 1987/711, Form 2; and any other notice to remedy must be in the form prescribed by Form 3. As to the service of notices see PARA 328 note 4. As to the making of orders generally see PARA 332 note 5.

3     le arbitration under the Agricultural Holdings Act 1986: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1). As to arbitrations generally see PARA 469 et seq.

4     Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(a).

5     Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(b).

6     Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(c).

7     Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1). Any other questions must be raised at the same time: see art 4(1), (2); and PARA 386. A failure by the tenant to comply with the notice in respect of work, liability for which he does not dispute will enable the landlord to serve a notice for non-compliance: see *Ladd's Radio and Television Service Ltd v Docker* (1973) 226 Estates Gazette 1565, CA.

8     As to the meaning of 'landlord' see PARA 323 note 7.

9     Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(2). No form is prescribed for the tenant's notice.

10    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(3)(a).

11    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(3)(b).

12    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(3)(c).

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### **386. Notice on additional questions.**

Where a tenant<sup>1</sup> on whom a notice to do work<sup>2</sup> has been served wishes to have determined by arbitration<sup>3</sup> any additional question<sup>4</sup>, he must do so by serving on the landlord<sup>5</sup>, within one month after the service of the notice to do work, a written notice requiring the question to be so determined<sup>6</sup>. Where the tenant on whom a notice to do work has been served does not wish a question<sup>7</sup> to be determined by arbitration, but wishes to have any other question<sup>8</sup> arising under the notice determined by arbitration, he must do so either by serving on the landlord, within one month after the service of the notice to do work, a written notice requiring the question to be so determined<sup>9</sup> or by serving a notice requiring arbitration<sup>10</sup>.

1     As to the meaning of 'tenant' see PARA 323 note 5.

2     As to the meaning of 'notice to do work' see PARA 385 note 2. As to the service of notices see PARA 328 note 4.

3     le arbitration under the Agricultural Holdings Act 1986: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(1). As to arbitrations generally see PARA 469 et seq.



- 4    le a question in addition to one specified in the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1) (see PARA 385), but which is not itself such a question: art 4(1).
- 5    As to the meaning of 'landlord' see PARA 323 note 7.
- 6    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(1).
- 7    le a question under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1) (see PARA 385).
- 8    le a question not within the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1).
- 9    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(2)(a).
- 10   Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(2)(b). The notice requiring arbitration must be in accordance with art 9 (see PARA 391).

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### **387. Subsequent events making time unreasonable.**

A tenant<sup>1</sup> who has required arbitration<sup>2</sup> and who has been found liable to comply with a notice to do work<sup>3</sup> or with any part of it is not precluded from subsequently requiring arbitration<sup>4</sup> on the ground that in consequence of anything happening before the expiration of the time for doing the work, as extended by the arbitrator<sup>5</sup>, it would have been unreasonable to require the tenant to do the work within that time<sup>6</sup>.

- 1    As to the meaning of 'tenant' see PARA 323 note 5.
- 2    le arbitration under the Agricultural Holdings Act 1986 by virtue of the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(1) (see PARA 386). As to arbitrations generally see PARA 469 et seq.
- 3    As to the meaning of 'notice to do work' see PARA 385 note 2.
- 4    le under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9 (see PARA 391).
- 5    le extended under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 6(2) (see PARA 388).
- 6    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 4(3).

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### **388. Modification of notice and extension of time.**

In addition to his other powers<sup>1</sup> the arbitrator may, in relation to any question of the deletion from a notice to do work<sup>2</sup> of any item or part of an item on the ground that it is unnecessary or unjustified, modify such a notice by deleting any item or part of an item specified in the notice as to which, having due regard to the interests of good husbandry<sup>3</sup> as respects the agricultural

holding<sup>4</sup> to which the notice relates, and of sound management of the estate which consists solely or partly of that holding, the arbitrator is satisfied that it is unnecessary or unjustified<sup>5</sup>. Additionally, in relation to any question arising on a notice to do work as to the substitution, in the case of any item or part of an item, of a different method or material<sup>6</sup>, the arbitrator may modify the notice to effect such substitution where, having regard to the purpose which that item or part is intended to achieve, he is satisfied that the method or material which the notice would otherwise require to be used would involve undue difficulty or expense<sup>7</sup>, the substituted method or material would be substantially as effective for that purpose<sup>8</sup>, and that in all the circumstances the substitution is justified<sup>9</sup>.

Where a tenant requires any question to be determined by arbitration<sup>10</sup> the time specified for doing the work which is the subject of the arbitration is extended until the termination<sup>11</sup> of the arbitration<sup>12</sup>. Where the arbitrator finds that the tenant is liable to comply with the notice to do work or with any part of it, he must extend the time for doing that work by such further period as he thinks fit<sup>13</sup>.

1 See PARA 389.

2 In any question specified in the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(b) (see PARA 385). As to the meaning of 'notice to do work' see PARA 385 note 2.

3 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

4 As to the meaning of 'agricultural holding' see PARA 323.

5 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 5(a).

6 In any question specified in the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(c) (see PARA 385).

7 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 5(b)(i).

8 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 5(b)(ii).

9 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 5(b)(iii).

10 In under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3 (see PARA 385) or art 4 (see PARAS 386-387).

11 'Termination', in relation to arbitration, means the date on which the arbitrator's award is delivered to the tenant: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 2(1).

12 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 6(1).

13 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 6(2).

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### **389. Date of termination of tenancy on failure to do work.**

Where the arbitrator extends the time specified for doing any work<sup>1</sup> he may, either of his own motion or on the application of the landlord<sup>2</sup> made not later than 14 days after the termination<sup>3</sup> of the arbitration, specify a date for the termination of the tenancy by notice to quit in the

event of the tenant's failure to do the work within the extended time<sup>4</sup>. The date so specified must not, however, be earlier than whichever is the later of:

- 122 (1) the date on which the tenancy could have been terminated by notice to quit served on the expiration of the time originally specified in the notice to do work<sup>5</sup>; and
- 123 (2) six months after the expiration of the extended time<sup>6</sup>.

Where the landlord makes an application for the arbitrator to specify a date, he must, unless the application is made at the arbitration, at the same time give written notice<sup>7</sup> of the application to the tenant<sup>8</sup>, and the tenant is entitled to be heard on the application<sup>9</sup>. A notice to quit on a date specified by the arbitrator must be served on the tenant within one month of the expiration of the extended time and, subject to any right of the tenant to contest it, will be valid notwithstanding that it is served less than 12 months before the date on which the tenancy is to be terminated or that that date is not the end of a year of the tenancy<sup>10</sup>.

1    le under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 6(2) (see PARA 388).

2    As to the meaning of 'landlord' see PARA 323 note 7.

3    As to the meaning of 'termination' see PARA 388 note 11.

4    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 7(1).

5    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 7(2)(a). As to the meaning of 'notice to do work' see PARA 385 note 2.

6    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 7(2)(b).

7    As to the service of notices see PARA 328 note 4.

8    As to the meaning of 'tenant' see PARA 323 note 5.

9    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 7(3).

10   Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 7(4). As to the normal period of notice required on a notice to quit see PARA 373.

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### **390. Recovery of the cost of work.**

Where an arbitration relates wholly or partly to a question as to the liability of the tenant<sup>1</sup> to do work specified in the notice to do work<sup>2</sup> and it appears to the arbitrator that the tenant has done work specified in the notice which he was under no obligation to do, the arbitrator must determine the reasonable cost of such work, which is then recoverable from the landlord<sup>3</sup>.

1    As to the meaning of 'tenant' see PARA 323 note 5.

2    le a question under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 3(1)(a) (see PARA 385). As to the meaning of 'notice to do work' see PARA 385 note 2.

3 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 8. As to the meaning of 'landlord' see PARA 323 note 7. The provisions of the Agricultural Holdings Act 1986 s 85(1) (recovery of a sum as if payable as an order of the county court if the sum is not paid within 14 days of becoming due: see PARA 474) apply to the recovery of this cost from the landlord: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 8.

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### ***E. ARBITRATION CONCERNING NOTICES TO QUIT***

#### **391. Notice requiring arbitration, appointment of arbitrator and service of counter-notice.**

Where it is stated in a notice to quit that the notice is given for one or more of the reasons stated in Case A<sup>1</sup>, B<sup>2</sup>, D<sup>3</sup> or E<sup>4</sup>, and the tenant<sup>5</sup> wishes to contest any question arising out of the provisions relating to those Cases<sup>6</sup>, he must within one month after the service of the notice<sup>7</sup> serve on the landlord<sup>8</sup> notice in writing requiring the question to be determined by arbitration<sup>9</sup>.

A notice requiring arbitration<sup>10</sup> ceases to be effective three months after the date of service unless before the expiry of those three months, for the purposes of the arbitration either:

- 124 (1) an arbitrator has been appointed by agreement between the parties<sup>11</sup>; or
- 125 (2) an application has been made<sup>12</sup> for the appointment of an arbitrator<sup>13</sup>.

Where arbitration is required in respect of a notice to quit which is capable of taking effect either as a notice the operation of which can be restricted by the service of a counter-notice<sup>14</sup> or as a notice the operation of which cannot be so restricted<sup>15</sup>, and in consequence of the arbitration the notice takes effect as a notice the operation of which can be restricted by the service of a counter-notice<sup>16</sup>, the time within which a counter-notice may be served by the tenant on the landlord is one month from the termination of the arbitration<sup>17</sup>.

1 See PARA 377.

2 See PARA 378.

3 See PARA 380.

4 See PARA 381.

5 As to the meaning of 'tenant' see PARA 323 note 5.

6 le arising out of the Agricultural Holdings Act 1986 s 26(2), Sch 3 (see PARAS 377-384).

7 As to the service of notices see PARA 328 note 4.

8 As to the meaning of 'landlord' see PARA 323 note 7.

9 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9. 'Arbitration' means arbitration under the Agricultural Holdings Act 1986: Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9. As to arbitrations generally see PARA 469 et seq.

This is the only procedure available for the purpose of contesting a reason specified in a notice to quit given under Case A, B, D or E: *Ladd's Radio and Television Service Ltd v Docker* (1973) 226 Estates Gazette 1565, CA;

*Crown Estates Comrs v Allingham* (1973) 226 Estates Gazette 2153, CA; *A-G for the Duchy of Lancaster v Simcock* [1966] Ch 1, [1965] 2 All ER 32; *Magdalen College, Oxford v Heritage* [1974] 1 All ER 1065, [1974] 1 WLR 441, CA; *Harding v Marshall* (1983) 267 Estates Gazette 161, CA; *Parrish v Kinsey* [1983] 2 EGLR 13, 268 Estates Gazette 1113, CA. It does not follow that the tenant is precluded from challenging in court a notice to quit on some other ground, eg that it is bad in law or is unclear (see eg *Rous v Mitchell* [1991] 1 All ER 676, [1991] 1 WLR 469, CA (court retained jurisdiction on failure of tenant to serve demand for arbitration where notice to quit was fraudulent)). In the case of a serviceman (see PARA 394 note 8) the tenant's failure to serve a notice under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9 does not affect his right to contest a question in proceedings consequent upon the service of a counter-notice or in any arbitration which the agricultural land tribunal has required for the purpose of determining such question: see art 17(3). As to agricultural land tribunals see PARAS 670-673.

10    Ie under Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9 (see the text and notes 1-9).

11    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 10(a).

12    Ie under the Agricultural Holdings Act 1986 s 84(2) (see PARA 473).

13    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 10(b) (amended by SI 2006/2805).

14    Ie a notice to which the Agricultural Holdings Act 1986 s 26(1) (see PARA 374) applies. See *Rous v Mitchell* [1991] 1 All ER 676, [1991] 1 WLR 469, CA (failure to serve demand for arbitration where notice to quit was fraudulent).

15    Ie a notice to which the Agricultural Holdings Act 1986 s 26(2) (see PARA 376) applies.

16    See note 14.

17    Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 11. As to the meaning of 'termination' in relation to arbitration see PARA 388 note 11. As to the disapplication of art 11 in relation to servicemen see art 17(4). As to a serviceman as tenant on whom a notice to quit is served see PARA 394.

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### **392. Postponement of operation of notice to quit.**

Where a tenant<sup>1</sup> requires the determination by arbitration of a question arising out of a notice to quit<sup>2</sup>, the operation of the notice is suspended until the expiry of the time fixed<sup>3</sup> for appointing or making an application for the appointment of an arbitrator<sup>4</sup>, or, where such appointment or application has already been made, until the termination of the arbitration<sup>5</sup>.

Where, in consequence of an arbitration, a notice to quit takes effect or the agricultural land tribunal<sup>6</sup> has consented to its operation<sup>7</sup>, and the notice would otherwise come into operation on or within six months after the termination of the arbitration or the giving of the consent<sup>8</sup>, the arbitrator or the tribunal may, either of his or its own motion or on the application of the tenant made not later than 14 days after the termination of the arbitration or the giving of the consent, postpone the termination of the tenancy for a period not exceeding 12 months<sup>9</sup>. Where the tenant makes such an application he must, unless it is made at the hearing or before the tribunal, at the same time give the landlord<sup>10</sup> written notice<sup>11</sup> of the application, and the landlord is entitled to be heard on the application<sup>12</sup>.

1    As to the meaning of 'tenant' see PARA 323 note 5.

- 2 le by virtue of the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9 (see PARA 391), under the Agricultural Holdings Act 1986. As to arbitrations generally see PARA 469 et seq.
- 3 le under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 10 (see PARA 391).
- 4 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 12(a) (amended by SI 2006/2805).
- 5 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 12(b). As to the meaning of 'termination' in relation to arbitrations see PARA 388 note 11.
- 6 As to agricultural land tribunals see PARAS 670-673.
- 7 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 13(1)(a). The reference in the text to a tribunal consenting to the operation of a notice to quit is a reference to the tribunal having so consented under the Agricultural Holdings Act 1986 s 26(1) (see PARA 374) or s 28(2) (see PARA 380).
- 8 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 13(1)(b).
- 9 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 13(1).
- 10 As to the meaning of 'landlord' see PARA 323 note 7.
- 11 As to the service of notices see PARA 328 note 4.
- 12 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 13(2).

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### **393. Extension of time under notice to remedy after notice to quit.**

Where a notice to quit is stated to be by reason of the tenant's<sup>1</sup> failure to remedy a breach of any term or condition of his tenancy within the time specified in the notice to remedy<sup>2</sup> or within that time as extended<sup>3</sup>, and it appears to the arbitrator<sup>4</sup> that, notwithstanding that the time originally specified was reasonable, it would have been unreasonable to require the tenant to remedy the breach within that time<sup>5</sup>, then the arbitrator may treat the time as having been extended or further extended and may make his award as if the time had not expired<sup>6</sup>.

Where the time specified for doing any work is so extended<sup>7</sup>, the arbitrator may, of his own motion or on the application of the landlord made not later than 14 days after the termination of the arbitration<sup>8</sup>, specify a date for the termination of the tenancy by a subsequent notice to quit in the event of the tenant's failure to do the work in the extended time<sup>9</sup>. That date must not be earlier than whichever is the later of the date on which the tenancy could have been terminated by the original notice to quit<sup>10</sup> or six months after the expiration of the extended time<sup>11</sup>. Where the landlord applies to the arbitrator to specify such a date, he must, unless the application is made at the arbitration, at the same time give the tenant written notice of the application, and the tenant is entitled to be heard on the application<sup>12</sup>. A notice to quit on a date so specified must be served on the tenant within one month after the expiration of the extended time and is valid notwithstanding that it is served less than 12 months before the date on which the tenancy is terminated or that that date is not the end of the year of the tenancy<sup>13</sup>. Where a subsequent notice to quit is given on a date specified, in a case where the original notice to quit included a statement in accordance with Case D to the effect that it was given by reason of the tenant's failure to comply with a notice to do work<sup>14</sup>, if the tenant serves a written counter-notice on the landlord within one month of that subsequent notice (or, if the date specified in that notice for the determination is earlier, before that date) the subsequent

notice is ineffective without the consent of the agricultural land tribunal<sup>15</sup>. On such an application made by the landlord the tribunal must consent to the operation of the notice to quit unless it appears to it, having regard to the extent to which the tenant has failed to comply with the notice to do work<sup>16</sup>, to the consequences of his failure to comply with it in any respect<sup>17</sup>, and to the circumstances surrounding any such failure<sup>18</sup>, that a fair and reasonable landlord would not insist on possession<sup>19</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 14(a)(i). See Case D(b); and PARA 380. As to the meaning of 'notice to remedy' see PARA 385 note 2.

3 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 14(a)(ii). The reference in the text to the time as extended is a reference to its extension either by the landlord or in pursuance of art 6 (see PARA 388). As to the meaning of 'landlord' see PARA 323 note 7.

4 Ie on an arbitration under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 9 (see PARA 391).

5 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 14(b).

6 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 14. The arbitrator may extend the time by such period as he considers reasonable having regard to the length of time which has elapsed since the service of the notice to remedy: art 14. As to the service of notices see PARA 328 note 4.

7 Ie under the Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 14 (see the text and notes 1-6).

8 As to the meaning of 'termination' in relation to arbitrations see PARA 388 note 11.

9 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(1).

10 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(2)(a). The notice referred to in the text is the notice which was the subject of the arbitration.

11 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(2)(b).

12 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(3).

13 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(4).

14 As to the meaning of 'notice to do work' see PARA 385 note 2.

15 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(5).

16 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(6)(a).

17 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(6)(b).

18 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(6)(c).

19 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 15(6).

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### **394. Notice to quit where tenant is a serviceman.**

Where a serviceman<sup>1</sup> who is the tenant of an agricultural holding<sup>2</sup> which comprises a dwelling house occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming<sup>3</sup> of the holding<sup>4</sup> is given notice<sup>5</sup> to quit the holding<sup>6</sup> or part thereof being a part which consists of or comprises such a dwelling house<sup>7</sup>, and the notice is given during the tenant's period of residence protection<sup>8</sup>, he may serve a counter-notice<sup>9</sup> on the landlord<sup>10</sup>, rendering the notice to quit ineffective without the consent of the agricultural land tribunal<sup>11</sup>, notwithstanding that the circumstances fall within any of Cases B to G<sup>12</sup>. If the tribunal is satisfied that any of the circumstances do fall within those Cases, it is not obliged to withhold consent by reason only of its not being satisfied of the existence of circumstances which are normally prerequisite to consent<sup>13</sup>.

In determining whether to give or withhold its consent the tribunal, if it is satisfied that the circumstances fall within any of Cases B to G, or that circumstances exist of which it must normally be satisfied before giving consent<sup>14</sup>, must consider to what extent, if at all, the existence of those circumstances is directly or indirectly attributable to the serviceman's performing or having performed the period of relevant service<sup>15</sup>. Furthermore, the tribunal must in any event consider to what extent, if at all, the giving of consent at a time during the period of protection would cause special hardship in view of circumstances directly or indirectly due to the serviceman's performing or having performed the period of relevant service<sup>16</sup>, and must withhold consent unless in all the circumstances it considers it reasonable to give it<sup>17</sup>.

When a serviceman is serving abroad<sup>18</sup>, counter-notice may be authorised by the tribunal to be served on his behalf; subsequent necessary acts may be done and proceedings conducted by a person deemed duly authorised so to do by the tribunal<sup>19</sup>.

Where, on an application by the landlord for the tribunal's consent to a notice to quit, it appears to the tribunal that the reason or reasons fall within Case B, Case D or Case E and that it is expedient that any question arising in relation to such reasons should be determined by arbitration, it may require the determination of the question before considering whether to grant or withhold consent<sup>20</sup>.

1 See note 8.

2 As to the meaning of 'tenant' see PARA 323 note 5. As to the meaning of 'agricultural holding' see PARA 323.

3 As to the 'farming' of land see PARA 324.

4 I.e. a dwelling house within the Rent Act 1977 s 10 (see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 868) or the Housing Act 1988 Sch 1 para 7 (see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1032): Agricultural Holdings Act 1986 s 30, Sch 5 para 2(2)(a) (amended by the Housing Act 1988 s 140(1), Sch 17 para 70).

5 As to the service of notices see PARA 328 note 4.

6 Agricultural Holdings Act 1986 Sch 5 para 2(1)(b)(i).

7 Agricultural Holdings Act 1986 Sch 5 para 2(1)(b)(ii), (2)(b).

8 Agricultural Holdings Act 1986 Sch 5 para 2(1)(a). 'Period of residence protection' means, in the case of a serviceman who performs a period of relevant service other than a short period of training, the period comprising that period of service and the four months immediately following the date on which it ends; a 'serviceman' is a man or woman who performs a period of relevant service; and 'relevant service' and 'short period of training' have the meanings given by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 64(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 79): Agricultural Holdings Act 1986 Sch 5 para 1.

As to where notice to quit is served before the period of residence protection see note 17.

9 I.e. a notice within the Agricultural Holdings Act 1986 s 26(1) (see PARA 374).

10 As to the meaning of 'landlord' see PARA 323 note 7.

11 As to agricultural land tribunals see PARAS 670-673.



12 Agricultural Holdings Act 1986 Sch 5 para 3(1). For Cases B-G see PARAS 378-383.

13 Agricultural Holdings Act 1986 Sch 5 para 3(1). The circumstances normally prerequisite to consent are those contained in s 27(3)(a)-(f) (see PARA 375).

14 See note 13.

15 Agricultural Holdings Act 1986 Sch 5 para 3(2)(a). See also note 17.

16 Agricultural Holdings Act 1986 Sch 5 para 3(2)(b). See also note 17.

17 Agricultural Holdings Act 1986 Sch 5 para 3(2). The provisions of Sch 5 para 3(2) apply, mutatis mutandis, to a serviceman to whom notice was given before his period of residence protection began, who subsequently served a counter-notice, where the tribunal has not by the beginning of that period decided whether to give or withhold consent to the operation of the notice: Sch 5 para 4.

18 He when he is performing a period of relevant service and is outside the United Kingdom: Agricultural Holdings Act 1986 Sch 5 para 6(2). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

19 See the Reserve and Auxiliary Forces (Agricultural Tenancies) Regulations 1959, SI 1959/84, regs 5, 6 (made under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 22(4)). Application is to be made in writing to the secretary of the tribunal for the area in which the holding is wholly or in greater part situate (Reserve and Auxiliary Forces (Agricultural Tenancies) Regulations 1959, SI 1959/84, reg 7); and authority is given by the chairman (regs 5, 6).

20 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 17(1).

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### **395. Notice to quit part under section 31.**

A notice to quit part of an agricultural holding<sup>1</sup> held on a tenancy from year to year given by the landlord<sup>2</sup> of the holding is not invalid<sup>3</sup> on the ground that it relates to part only of the holding if it is given either for the purpose of adjusting the boundaries between agricultural units<sup>4</sup> or amalgamating units or parts of units<sup>5</sup>, or with a view to the use of the land<sup>6</sup> to which the notice relates for the purpose of any of the objects listed below<sup>7</sup>, and the notice states that it is given for that purpose or with a view to that object<sup>8</sup>.

The objects mentioned above are:

126 (1) the erection of farm labourers' cottages or other houses with or without gardens<sup>9</sup>;

127 (2) the provision of gardens for farm labourers' cottages or other houses<sup>10</sup>;

128 (3) the provision of allotments<sup>11</sup>;

129 (4) the letting of land (with or without other land) as a smallholding<sup>12</sup>;

130 (5) the planting of trees<sup>13</sup>;

131 (6) the opening or working of a deposit of coal, ironstone, limestone, brick-earth, or other mineral, or a stone quarry, or a clay, sand or gravel pit, or the construction of any works or buildings to be used in connection therewith<sup>14</sup>;

132 (7) the making of a watercourse or reservoir<sup>15</sup>; or

133 (8) the making of a road, railway, tramroad, siding, canal or basin, or a wharf, pier or other work connected therewith<sup>16</sup>.

- 1 As to the meaning of 'agricultural holding' see PARA 323.
- 2 As to the meaning of 'landlord' see PARA 323 note 7.
- 3 A notice to quit part of an agricultural holding would be bad at common law in the absence of a contractual provision: *Re Bebington's Tenancy, Bebington v Wildman* [1921] 1 Ch 559; *Woodward v Earl of Dudley* [1954] Ch 283, [1954] 1 All ER 559. The landlord's notice to quit part of the premises must be in writing: cf *Moyle v Jenkins* (1881) 8 QBD 116, DC; *R v Shurmer* (1886) 17 QBD 323; *R v Harris* (1918) 82 JP 196.
- 4 As to the meaning of 'agricultural unit' see PARA 324 note 7.
- 5 Agricultural Holdings Act 1986 s 31(1)(a).
- 6 As to the use of land for agriculture see PARA 324 note 7.
- 7 Agricultural Holdings Act 1986 s 31(1)(b).
- 8 Agricultural Holdings Act 1986 s 31(1).
- 9 Agricultural Holdings Act 1986 s 31(2)(a).
- 10 Agricultural Holdings Act 1986 s 31(2)(b).
- 11 Agricultural Holdings Act 1986 s 31(2)(c).
- 12 Agricultural Holdings Act 1986 s 31(2)(d). For this purpose a 'smallholding' is a smallholding under the Agriculture Act 1970 Pt III (ss 37-65) (see PARA 488 et seq).
- 13 Agricultural Holdings Act 1986 s 31(2)(e).
- 14 Agricultural Holdings Act 1986 s 31(2)(f).
- 15 Agricultural Holdings Act 1986 s 31(2)(g).
- 16 Agricultural Holdings Act 1986 s 31(2)(h).

## UPDATE

### 395 Notice to quit part under section 31

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 396. Notice to quit part under other means.

The contract of tenancy<sup>1</sup> may expressly provide for notice to quit part only of the holding; additionally, on severance by conveyance, surrender or otherwise of the reversionary estate in any land comprised in a lease (which includes an underlease or other tenancy) every condition

or right of re-entry (which includes the right to determine the lease by notice to quit or otherwise) is apportioned and remains annexed to the several parts of the reversionary estate as severed<sup>2</sup>.

1 As to the meaning of 'contract of tenancy' see PARA 325.

2 Law of Property Act 1925 s 140(1).

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### **397. Rent reduction following notice to quit part.**

Where the landlord<sup>1</sup> resumes possession of part of the holding<sup>2</sup> the tenant is entitled to a proportionate reduction of rent in respect of that part of the holding, and in respect of any depreciation of the value to him of the residue of the holding caused by the severance or by the use to be made of the part severed<sup>3</sup>. In default of agreement the amount of that reduction must be determined by arbitration<sup>4</sup>. Where it falls to the arbitrator to assess the amount of reduction in a case where the landlord's resumption of possession of part of the holding is pursuant to a provision in the contract of tenancy<sup>5</sup>, the arbitrator must take into consideration any benefit or relief allowed to the tenant under the contract of tenancy<sup>6</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 These provisions apply whether such resumption is by virtue of the Agricultural Holdings Act 1986 s 31(1) (see PARA 395) or in pursuance of a provision in that behalf contained in the contract of tenancy: s 33(1). As to the meaning of 'contract of tenancy' see PARA 325.

3 Agricultural Holdings Act 1986 s 33(1).

4 Agricultural Holdings Act 1986 s 33(2). As to arbitrations generally see PARA 469 et seq.

5 As to the meaning of 'contract of tenancy' see PARA 325.

6 Agricultural Holdings Act 1986 s 33(3).

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### **398. Notice to quit part treated as notice to quit entire holding.**

Where a notice to quit is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter-notice expiring at the same time as the original notice<sup>1</sup>. Where a notice to quit part of an agricultural holding<sup>2</sup> is given to a tenant<sup>3</sup> and that notice either has been rendered valid<sup>4</sup> or is a notice given by a person entitled to a severed part of the reversionary estate in the holding<sup>5</sup>, then if within 28 days after the giving of the notice<sup>6</sup> or, where the operation of the

notice depends on proceedings under statute<sup>7</sup>, within 28 days after the time at which it is determined that the notice has effect<sup>8</sup>, the tenant gives to the landlord<sup>9</sup> (or the person entitled under the severance) written counter-notice that he accepts the notice to quit as a notice to quit the entire holding, the notice to quit takes such effect<sup>10</sup>.

1 Law of Property Act 1925 ss 140(1), (2), 154 (s 140(2) amended by the Agricultural Holdings Act 1948 s 98, Sch 8). See also **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5. As to the service of notices see PARA 328 note 4.

4 Agricultural Holdings Act 1986 s 32(1)(a). The reference in the text to a notice having been rendered valid is a reference to its being so rendered by virtue of s 31 (see PARA 395).

5 Agricultural Holdings Act 1986 s 32(1)(b).

6 Agricultural Holdings Act 1986 s 32(2)(a).

7 ie proceedings under the Agricultural Holdings Act 1986 Pt III (ss 25-33).

8 Agricultural Holdings Act 1986 s 32(2)(b).

9 As to the meaning of 'landlord' see PARA 323 note 7.

10 Agricultural Holdings Act 1986 s 32(2). Severance of the freehold reversion does not operate to create two or more tenancies, whether or not accompanied by a legal apportionment of the rent: *Jelley v Buckman* [1974] QB 488, [1973] 3 All ER 853, CA; *Stiles v Farrow* (1977) 241 Estates Gazette 623. If the landlord of the newly created severed part is a mere nominee of the landlord of the remaining part and if that fact is clear on the face of the documents, even though the estate may have been severed the equitable interest will remain whole and undivided and the nominee landlord of the severed part will not be able to implement the provisions of the Law of Property Act 1925 s 140 (see the text and note 1): *Persey v Bazeley* (1984) 47 P & CR 37, CA. Cf also *John v George* (1995) 71 P & CR 375, [1996] 1 EGLR 7, CA (landlords conveyed part of reversion to trustees on trust for daughter; trustees notice to quit part upheld). For the position relating to compensation see the Agricultural Holdings Act 1986 s 60(1)(b); and PARA 447.

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### 399. Operation of notices to quit against sub-tenants.

The right of a tenant<sup>1</sup> to restrict the operation of a notice to quit by means of a counter-notice does not apply where notice to quit a holding or part of a holding is given to a sub-tenant<sup>2</sup> by a tenant who has himself been given notice to quit<sup>3</sup> that holding or that part and the fact that the tenant has been given such notice is stated in the notice given to the sub-tenant<sup>4</sup>; but the notice given to the sub-tenant will not have effect if that given to the tenant does not have effect<sup>5</sup>. A notice to quit part of a holding which is accepted by the tenant<sup>6</sup> as a notice to quit the entire holding is deemed for the purpose of these provisions to be a notice to quit the entire holding given by the landlord to his tenant<sup>7</sup>. If the notice to quit served by the landlord on the tenant is a valid notice to quit which puts an end to the tenancy of the whole of the property at the expiry of the notice, any sub-tenancy created during the existence of the tenancy is also ended by the ordinary application of common law<sup>8</sup>.

1 ie under the Agricultural Holdings Act 1986 s 26(1) (see PARA 374). As to the meaning of 'tenant' see PARA 323 note 5.

2 There is power to provide: (1) for excluding sub-tenants from the right to give counter-notices to notices to quit (Agricultural Holdings Act 1986 s 29, Sch 4 para 6); and (2) for safeguarding the interests of sub-tenants by such provision as appears expedient, including provision enabling the agricultural land tribunal, where the interest of a tenant is terminated by notice to quit, to secure that a sub-tenant will hold from the landlord on the like terms as he held from the tenant (Sch 4 para 7). The provisions cited in the text were made under the first limb of this power. At the date at which this volume states the law, the power had not been exercised as respects the second limb. As to agricultural land tribunals see PARAS 670-673. As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the service of notices see PARA 328 note 4.

4 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 16(1).

5 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 16(2).

6 le under the Agricultural Holdings Act 1986 s 32 (see PARA 398).

7 Agricultural Holdings (Arbitration on Notices) Order 1987, SI 1987/710, art 16(3).

8 *Sherwood v Moody* [1952] 1 All ER 389, [1952] 1 TLR 450. In considering a series of transactions involving the grant of a tenancy and sub-tenancy which taken together constituted a composite scheme intended to avoid the security of tenure provisions, the court refused to apply this principle and held that the sub-tenant was entitled to statutory protection: *Gisborne v Burton* [1989] QB 390, [1988] 3 All ER 760, CA. Cf *Barrett v Morgan* [2000] 2 AC 264, [2000] 1 All ER 481, where a collusive agreement by the tenant with the landlord not to serve a counter-notice did not prevent the sub-tenancy from being determined.

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## **(vi) Succession on Death or Retirement**

### **A. IN GENERAL**

#### **400. Tenancies with succession rights.**

In relation to certain kinds of tenancies of agricultural holdings<sup>1</sup> provision is made by the Agricultural Holdings Act 1986<sup>2</sup> governing the succession to such tenancies on the death of a sole or sole surviving tenant<sup>3</sup> or on the retirement of the tenant or tenants<sup>4</sup>. In order for those provisions to apply the tenancy must either have been granted before 12 July 1984<sup>5</sup> or have been granted after that date in any of the following circumstances:

- 134 (1) the tenancy is already a succession tenancy, that is a tenancy granted by virtue of a direction of the agricultural land tribunal<sup>6</sup> on the death or retirement of the previous tenant<sup>7</sup>;
- 135 (2) the tenancy was granted after such a direction of the tribunal following the death of the previous tenant but before that direction took effect<sup>8</sup>;
- 136 (3) the tenancy was granted by a written contract of tenancy<sup>9</sup> indicating that the relevant statutory provisions<sup>10</sup> would apply to it<sup>11</sup>; or
- 137 (4) the tenancy is a re-grant to a person who immediately before 12 July 1984 was a tenant of the holding or of any agricultural holding which comprised the whole or a substantial part of the land in the holding in question<sup>12</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323.

2 The relevant provisions of the Agricultural Holdings Act 1986 are contained in Pt IV (ss 34-59) (see the text and notes 3-12; and PARAS 401-413).

3 See the Agricultural Holdings Act 1986 ss 35-48; and PARAS 405-408. For these purposes 'tenant' does not include an executor, administrator, trustee in bankruptcy or other person deriving title from a tenant by operation of law: ss 34(2), 37(9), 49(2). As to the meaning of 'tenant' generally see PARA 323 note 5.

4 See the Agricultural Holdings Act 1986 ss 49-58; and PARAS 409-412.

5 Agricultural Holdings Act 1986 s 34(1)(a). The date mentioned in the text is the date on which the Agricultural Holdings Act 1984, from which these provisions in part derive, was passed (ie received the Royal Assent).

6 As to agricultural land tribunals see PARAS 670-673.

7 Agricultural Holdings Act 1986 s 34(1)(b)(i). Such directions are made under s 39 (death of previous tenant: see PARA 405) or s 53 (retirement of previous tenant: see PARA 410).

8 Agricultural Holdings Act 1986 s 34(1)(b)(ii). Such directions are made under s 39 in the circumstances set out in s 45(6) (see PARA 407).

9 As to the meaning of 'contract of tenancy' see PARA 325.

10 Ie the Agricultural Holdings Act 1986 Pt IV.

11 Agricultural Holdings Act 1986 s 34(1)(b)(iii).

12 Agricultural Holdings Act 1986 s 34(1)(b)(iv). Where the Agricultural Holdings Act 1986 applies in relation to a tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 301, 321), the reference in the Agricultural Holdings Act 1986 s 34(1)(b)(iv) to a 'substantial part of the land comprised in the holding' means a substantial part determined by reference to either area or value: s 34(3) (added by SI 2006/2805).

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#### **401. Tenancies without succession rights.**

The following forms of tenancy do not carry with them succession rights<sup>1</sup>:

138 (1) tenancies for a fixed term of years of which more than 27 months remain unexpired<sup>2</sup>;

139 (2) former fixed term tenancies for more than one but less than two years<sup>3</sup>;

140 (3) tenancies where on the previous two occasions of the death of the sole or sole surviving tenant<sup>4</sup> of the holding or a related holding<sup>5</sup>, a succession tenancy was granted by virtue of a direction of the agricultural land tribunal<sup>6</sup> or such a direction had been made but had not taken effect<sup>7</sup>, or such a tenancy was granted by the landlord to a close relative<sup>8</sup> who was the sole remaining potential applicant for such a direction<sup>9</sup>;

141 (4) tenancies subject to a notice to quit before death or retirement, where if it was available to the tenant to serve a counter-notice<sup>10</sup> he had not done so before the expiry of the period of one month allowed for so doing<sup>11</sup> or the agricultural land tribunal had consented before the death of the tenant to the operation of the notice to quit<sup>12</sup>;

142 (5) tenancies subject to a valid notice to quit which falls within Case C<sup>13</sup> or Case F<sup>14</sup>;

143 (6) tenancies subject to a valid notice to quit which falls within Case B<sup>15</sup>, Case D<sup>16</sup> or Case E<sup>17</sup>, where:

3

5. (a) the time for requiring arbitration<sup>18</sup> had expired before the death without such requirement being made<sup>19</sup>;
6. (b) the time for serving a counter-notice on the upholding of the notice on arbitration had expired before the death without such counter-notice being served<sup>20</sup>; or
7. (c) the agricultural land tribunal had before the death consented to the operation of the notice<sup>21</sup>;

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144 (7) where the holding consists of land held by a smallholdings authority<sup>22</sup> or by the Secretary of State or the Welsh Ministers<sup>23</sup> for the purposes of smallholdings<sup>24</sup>; and

145 (8) tenancies granted by trustees in whom the land is vested on charitable trusts the sole or principal object of which is the settlement or employment in agriculture<sup>25</sup> of persons who have served in the armed forces<sup>26</sup>.

1 le the right to apply for a direction under the Agricultural Holdings Act 1986 s 39 (see PARA 405) or s 53 (see PARA 410).

2 Agricultural Holdings Act 1986 s 36(1), (2)(a). This does not apply in relation to succession on the retirement of the previous tenant: most of the exclusions relating to death are applied by s 51(1) (see PARA 409) to retirement, but s 51(1) does not refer to s 36(2).

3 Agricultural Holdings Act 1986 s 36(2)(b); and see note 2. Tenancies of this kind were wholly excluded from security of tenure: *Gladstone v Bower* [1960] 2 QB 384, [1960] 3 All ER 353, CA. Such tenancies can no longer exist: any tenancies of between one and two years will now be farm business tenancies under the Agricultural Tenancies Act 1995 (see PARA 301 et seq).

4 As to the meaning of 'tenant' see PARA 400 note 3.

5 A 'related holding', in relation to the holding in question, means any agricultural holding comprising the whole or a substantial part of the land comprised in the holding: Agricultural Holdings Act 1986 ss 35(2), 49(3). Where the Agricultural Holdings Act 1986 applies in relation to a tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 301, 321) the reference in the Agricultural Holdings Act 1986 ss 35(2), 49(3) to a 'substantial part of the land comprised in the holding' means a substantial part determined by reference to either area or value: ss 35(3), 49(4) (added by SI 2006/2805).

6 le a direction under the Agricultural Holdings Act 1986 s 39 (death of previous tenant: see PARA 405). As to agricultural land tribunals see PARAS 670-673.

7 Agricultural Holdings Act 1986 s 37(1)(a). See s 45(6); and PARA 407.

8 As to the meaning of 'close relative' see PARA 402 note 2.

9 Agricultural Holdings Act 1986 s 37(1)(b). This applies equally where, by agreement with the landlord before the death, the holding became let under a tenancy granted by the landlord or under an assignment of the existing tenancy to a person who, had the deceased tenant died before such grant or assignment, would have been the deceased tenant's close relative: s 37(2). For further provisions as to exclusion where two successions have already occurred see s 37(3)-(8). As to the meaning of 'landlord' see PARA 323 note 7.

This exclusion from succession rights on the death of a tenant applies, mutatis mutandis, in relation to the retirement of a tenant: see s 51(1); and PARA 409.

10 le a counter-notice under the Agricultural Holdings Act 1986 s 26(1) (see PARA 374).

11 Agricultural Holdings Act 1986 s 38(1)(a).

12 Agricultural Holdings Act 1986 s 38(1)(b). As to the granting or withholding of such consent by the tribunal see PARA 375. This exclusion from succession rights on the death of a tenant applies, mutatis mutandis, in relation to the retirement of a tenant: sees 51(1); and PARA 409.

- 13 See PARA 379.
- 14 Agricultural Holdings Act 1986 s 38(2). For Case F see PARA 382.
- 15 See PARA 378.
- 16 See PARA 380.
- 17 See PARA 381.
- 18 As to such arbitration see PARA 385 et seq.
- 19 Agricultural Holdings Act 1986 s 38(3)(a).
- 20 Agricultural Holdings Act 1986 s 38(3)(b).
- 21 Agricultural Holdings Act 1986 s 38(3)(c).
- 22 As to smallholdings authorities see PARAS 650-653.
- 23 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 24 Agricultural Holdings Act 1986 s 38(4). For this purpose a 'smallholding' is a smallholding under the Agriculture Act 1970 Pt III (ss 37-65) (see PARA 488 et seq).
- 25 As to the meaning of 'agriculture' see PARA 324.
- 26 Agricultural Holdings Act 1986 s 38(5).

## UPDATE

### 401 Tenancies without succession rights

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 402. Eligible persons.

For the purposes of the provisions relating to succession on death or retirement<sup>1</sup> 'eligible person' means any surviving close relative<sup>2</sup> of the deceased<sup>3</sup> (in the case of death) or the nominated successor<sup>4</sup> (in the case of retirement) in whose case:

- 146 (1) in the seven years ending with the date of the death or retirement<sup>5</sup> his only or principal source of livelihood for a continuous period of at least five years, or for two or more discontinuous periods together amounting to at least five years, derived from his agricultural work<sup>6</sup> on the holding or on an agricultural unit<sup>7</sup> of which the holding forms part (the 'livelihood condition')<sup>8</sup>; and



147 (2) he is not the occupier of a commercial unit of agricultural land (the 'occupancy condition')<sup>9</sup>.

1 ie the Agricultural Holdings Act 1986 ss 36-48 (death: see PARAS 405-408) or ss 49-58 (retirement: see PARAS 409-412).

2 A 'close relative' of a deceased or retiring tenant is the deceased or retiring tenant's wife, husband or civil partner, brother, sister or child, or other person treated as a child of the family in relation to the relevant marriage or civil partnership: Agricultural Holdings Act 1986 ss 35(2), 49(3) (ss 35(2), 49(3) amended, and ss 36(4A), 50(3A) added, by the Civil Partnership Act 2004 s 81, Sch 8 paras 36-38). The 'retiring tenant' is the tenant by whom the retirement notice was given, or, where it was given by joint tenants (and the context so permits), any one of those tenants, and the 'retiring tenants' accordingly means those tenants: Agricultural Holdings Act 1986 s 49(3). 'Retirement notice' means the notice mentioned in s 49(1) (see PARA 409): s 49(3).

3 ie the deceased tenant of the holding: Agricultural Holdings Act 1986 s 35(2). 'Holding' (except where the context otherwise requires) means the agricultural holding mentioned in s 35(1) (ie the holding held under a tenancy which falls within s 34(1)(a) or (b) (see PARA 400) (s 35(2)) or the holding in respect of which the retirement notice (see note 2) is given (s 49(3)).

4 Agricultural Holdings Act 1986 s 50(4), Sch 6 para 13. 'Nominated successor' means the eligible person named in the retirement notice: s 49(3).

5 'Retirement date' means the date specified in the retirement notice as the date as from which the proposed succession is to take place: Agricultural Holdings Act 1986 s 49(3).

6 As to the meaning of 'agricultural', and as to the meaning of 'agricultural land', see PARA 324. In the case of the deceased's wife or the wife of the retiring tenant the reference in the Agricultural Holdings Act 1986 ss 36(3)(a), 50(2)(a) to the relative's agricultural work is to be read as a reference to agricultural work carried out by either the wife or the deceased (or, as the case may be, retiring tenant) (or both of them) (ss 36(4), 50(3)); and in the case of the deceased's or retiring tenant's civil partner such reference is to be read as a reference to agricultural work carried out by either the civil partner or the deceased (or, as the case may be, retiring tenant) (or both of them) (ss 36(4A), 50(3A) (as added: see note 2)).

7 As to the meaning of 'agricultural unit' see PARA 324 note 7.

8 Agricultural Holdings Act 1986 ss 36(3)(a), (5), 50(2)(a), Sch 6 paras 1(1), 11, 12. For these purposes any period (not exceeding three years in all) within the stated period of seven years during which a close relative of the deceased or the nominated successor was attending a full-time course at a university, college or other establishment of higher or further education, is to be treated as a period during which his only or principal source of livelihood was his work on the holding: Sch 6 para 2 (amended by the Education Reform Act 1988 s 237(1), Sch 12 para 96).

The reference in the Agricultural Holdings Act 1986 ss 36(3)(a), 50(2)(a) to agricultural work carried out by a person on the holding or on an agricultural unit of which the holding forms part includes agricultural work carried out by him from the holding or an agricultural unit of which the holding forms part (ss 36(6)(a), 50(5)(a) (ss 36(6), 50(5) added by SI 2006/2805, art 5(1), (3))) and other work carried out by him on or from the holding or an agricultural unit of which the holding forms part (Agricultural Holdings Act 1986 ss 36(6)(b), 50(5)(b) (as so added)) which is of a description approved in writing by the landlord after 19 October 2006 (ie the date on which this amendment was brought into force) (Agricultural Holdings Act 1986 ss 36(6), 50(5) (as so added)).

The nominated successor is required to satisfy the livelihood condition in s 50(2)(a) by reference only to the seven years ending with the date of the giving of the retirement notice, rather than the seven years ending with the date of the tribunal hearing: see *Trustees of the Shirley Children's Settlement v Crabtree* [2007] EWHC 1532 (Admin), [2007] All ER (D) 332 (Jun).

In connection with the requirement that the applicant for a tenancy establishes his economic dependence on the holding see *Welby v Casswell* (1995) 71 P & CR 137, [1995] 42 EG 134. For an example of a case in which an applicant satisfied neither the livelihood condition nor the alternative 'suitable person' test under s 41(1)(b) (see PARA 404) see *Thomson v Church Comrs for England* [2006] EWHC 1773 (Admin), [2006] All ER (D) 162 (Jul).

9 Agricultural Holdings Act 1986 ss 36(3)(b), 50(2)(b), Sch 6 para 1(1). For this purpose a 'commercial unit of agricultural land' is a unit capable, when farmed under competent management, of producing a net annual income of an amount not less than the aggregate of the average annual earnings of two full-time male agricultural workers aged 20 or over: Sch 6 para 3(1). The Secretary of State and the Welsh Ministers may produce statements as to the net annual income which, in his or their view, the land is capable of producing for the purpose of the definition of 'commercial unit': see Sch 6 paras 5, 14. As to the 'farming' of land see PARA 324. As to the Secretary of State and the Welsh Ministers see PARA 643. The Secretary of State's and the Welsh

Ministers' prescribed figures as to units of production must be applied for these purposes: Sch 6 para 3(2). As to those prescribed figures see Sch 6 para 4; the Agricultural Holdings (Units of Production) (England) Order 2007, SI 2007/2968; and the Agricultural Holdings (Units of Production) (Wales) Order 2008, SI 2008/253.

## UPDATE

### 402 Eligible persons

NOTE 9--SI 2008/253 replaced: Agricultural Holdings (Units of Production) (Wales) Order 2009, SI 2009/3232. SI 2007/2968 now replaced by Agricultural Holdings (Units of Production) (England) Order 2009, SI 2009/2762.

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### 403. Special provisions regarding the occupancy condition.

For the purposes of the occupancy condition<sup>1</sup>:

148 (1) there must generally be disregarded certain types of occupation, namely occupation:

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8. (a) under a tenancy approved<sup>2</sup> by the Secretary of State and the Welsh Ministers<sup>3</sup>;
9. (b) under a tenancy for more than one but less than two years<sup>4</sup>;
10. (c) under a tenancy not within head (a) or (b) above and not having effect as a contract of tenancy<sup>5</sup>;
11. (d) under a tenancy the conversion of which into a tenancy from year to year has been excluded<sup>6</sup>;
12. (e) under a farm business tenancy<sup>7</sup> for less than five years (including a farm business tenancy which is a periodic tenancy)<sup>8</sup>;
13. (f) as a licensee<sup>9</sup>; and
14. (g) as an executor, administrator, trustee in bankruptcy or other person deriving title by operation of law<sup>10</sup>,

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149 although in all but the last case<sup>11</sup> such disregards do not apply in the case of a tenancy or licence granted to a close relative<sup>12</sup> of the deceased or the nominated successor<sup>13</sup> by his spouse<sup>14</sup> or civil partner<sup>15</sup> or by a body corporate controlled by him<sup>16</sup>;

150 (2) where any agricultural land<sup>17</sup> is jointly occupied<sup>18</sup> by a close relative of the deceased or the nominated successor and one or more other persons as beneficial joint tenants<sup>19</sup>, tenants in common<sup>20</sup>, joint tenants under a tenancy<sup>21</sup> or joint licensees<sup>22</sup>, the relative is treated for the purposes of the occupancy condition as occupying the whole of the land<sup>23</sup>;

151 (3) where a close relative of the deceased (in the case of a succession on death) is, by virtue of a direction of the agricultural land tribunal<sup>24</sup>, for the time being entitled (whether or not with any other person) to a tenancy of the whole or part of any agricultural holding<sup>25</sup> held by the deceased at the date of death other than the holding, he must be deemed to be in occupation of the land comprised in that holding or (as the case may be) in that part of that holding<sup>26</sup>;

- 152 (4) where the nominated successor (in the case of a succession on retirement) is, by virtue of a direction of the agricultural land tribunal<sup>27</sup>, for the time being entitled to a tenancy of any agricultural holding held by the retiring tenant other than the holding he must be deemed to be in occupation of that holding<sup>28</sup>;
- 153 (5) occupation by the spouse or civil partner of a close relative of the deceased or the nominated successor<sup>29</sup>, or by a body corporate controlled by a close relative of the deceased or the nominated successor<sup>30</sup>, is treated as occupation by the relative<sup>31</sup>; and
- 154 (6) where any agricultural land is occupied by any person under certain types of limited tenancies<sup>32</sup> or as a licensee<sup>33</sup> and that tenancy or licence was granted by a close relative of the deceased or the nominated successor or a connected person<sup>34</sup> (or both), being at the time it was granted a person or persons entitled to occupy the land otherwise than under a tenancy, or in a capacity, falling within certain restrictions<sup>35</sup>, the close relative must be deemed to be in occupation of the whole of the land<sup>36</sup>.

1 As to the occupancy condition see PARA 402.

2 It is approved under the Agricultural Holdings Act 1986 s 2(1) (see PARA 327). This also applies to a tenancy falling within s 2(3)(a) (see PARA 327). 'Tenancy' means the tenancy of the holding: ss 35(2), 49(3).

3 Agricultural Holdings Act 1986 Sch 6 para 6(1)(a). As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Agricultural Holdings Act 1986 Sch 6 para 6(1)(b).

5 Agricultural Holdings Act 1986 Sch 6 para 6(1)(c). As to the meaning of 'contract of tenancy' see PARA 325.

6 Agricultural Holdings Act 1986 Sch 6 para 6(1)(d). This is a tenancy to which s 3 does not apply by virtue of s 5 (see PARA 328).

7 It is within the meaning of the Agricultural Tenancies Act 1995 (see PARA 302): Agricultural Holdings Act 1986 Sch 6 para 6(1)(dd) (added by the Agricultural Tenancies Act 1995 s 40, Schedule para 32).

8 Agricultural Holdings Act 1986 Sch 6 para 6(1)(dd) (as added: see note 7).

9 Agricultural Holdings Act 1986 Sch 6 para 6(1)(e).

10 Agricultural Holdings Act 1986 Sch 6 para 6(1)(f).

11 It is the case specified under the Agricultural Holdings Act 1986 Sch 6 para 6(1)(f) (see head (g) in the text).

12 As to the meaning of 'close relative' see PARA 402 note 2.

13 As to the meaning of 'nominated successor' see PARA 402 note 4.

14 Until a day to be appointed any reference in the Agricultural Holdings Act 1986 Sch 6 to the 'spouse' of a close relative of the deceased or the nominated successor does not apply in relation to any time when the relative's marriage is the subject of a decree of judicial separation or a decree nisi of divorce or of nullity of marriage (Sch 6 para 1(3)); as from that day any such reference does not apply in relation to any time when a separation order or a divorce order under the Family Law Act 1996 (see ss 2-4) is in force in relation to the relative's marriage or that marriage is the subject of a decree nisi of nullity (Agricultural Holdings Act 1986 Sch 6 para 1(3) (prospectively amended by the Family Law Act 1996 s 66(1), Sch 8 para 36)). At the date at which this volume states the law no such day had been appointed.

15 Any reference in the Agricultural Holdings Act 1986 Sch 6 to the civil partner of a close relative of the deceased or the nominated successor does not apply in relation to any time when the relative's civil partnership is subject to a separation order under the Civil Partnership Act 2004 Pt 2 Ch 2 (ss 37-64) (Agricultural Holdings Act 1986 Sch 6 para 1(4)(a) (Sch 6 paras 1(2), 6(2), 9(1)(a), (2), 10(3)(a) amended, Sch 6 para 1(4) added, by the Civil Partnership Act 2004 Sch 8 para 39)) or a dissolution order, nullity order or presumption of death order that is a conditional order under the Civil Partnership Act 2004 Pt 2 Ch 2 (Agricultural Holdings Act 1986 Sch 6 para 1(4)(b) (as so added)).

16 Agricultural Holdings Act 1986 Sch 6 para 6(2) (as amended: see note 15). For these purposes a body corporate is controlled by a close relative of the deceased or the nominated successor if he or his spouse or his civil partner, or he and his spouse together or he and his civil partner together, have the power to secure, either by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of that body corporate are conducted in accordance with his, her or their wishes, respectively: Sch 6 para 1(2) (as so amended).

17 As to the meaning of 'agricultural', and as to the meaning of 'agricultural land', see PARA 324.

18 References in the Agricultural Holdings Act 1986 Sch 6 paras 7-10 (see the text and notes 19-36) to the occupation of land by any person do not include occupation under a tenancy, or in a capacity, falling within Sch 6 para 6(1)(a)-(f) (see heads (a)-(g) in the text): Sch 6 para 6(3).

19 Agricultural Holdings Act 1986 Sch 6 para 7(1)(a). See note 31.

20 Agricultural Holdings Act 1986 Sch 6 para 7(1)(b). See note 31.

21 Agricultural Holdings Act 1986 Sch 6 para 7(1)(c). See note 31.

22 Agricultural Holdings Act 1986 Sch 6 para 7(1)(d). See note 31.

23 Agricultural Holdings Act 1986 Sch 6 para 7(1). If, however, the agricultural land tribunal in proceedings under s 39 (see PARA 405) or, as the case may be, s 53 (see PARA 410) determines on the application of the close relative or the nominated successor that his appropriate share of the net annual income which the land is, or was at any time, capable of producing for the purposes of Sch 6 para 3 (see PARA 402) is or was then less than the aggregate of the earnings referred to therein, then, for the purpose of determining whether the occupancy condition is or was then satisfied in his case, the net annual income which the land is, or (as the case may be) was, capable of so producing must be treated as limited to his appropriate share: Sch 6 paras 7(2), 15. For this purpose the appropriate share of the close relative or the nominated successor must be ascertained: (1) where he is a beneficial or other joint tenant or a joint licensee, by dividing the net annual income which the land is or was at the time in question capable of producing for the purposes of Sch 6 para 3 by the total number of joint tenants or joint licensees for the time being (Sch 6 para 7(3)(a)); and (2) where he is a tenant in common, by dividing the said net annual income in such a way as to attribute to him and to the other tenant or tenants in common shares of the income proportionate to the extent for the time being of their respective undivided shares in the land (Sch 6 para 7(3)(b)). As to agricultural land tribunals see PARAS 670-673.

24 *le* under the Agricultural Holdings Act 1986 s 39 (see PARA 405).

25 As to the meaning of 'agricultural holding' see PARA 323.

26 Agricultural Holdings Act 1986 Sch 6 para 8(1). Where by virtue of this provision any land is deemed to be occupied by each of two or more close relatives of the deceased as a result of a direction entitling them to a joint tenancy of the land, the provisions of Sch 6 para 7 (see the text and notes 17-23) apply to each of the relatives as if the land were jointly occupied by him and the other relative or relatives as joint tenants under that tenancy: Sch 6 para 8(2).

27 *le* under the Agricultural Holdings Act 1986 s 53(7) (see PARA 410).

28 Agricultural Holdings Act 1986 Sch 6 para 16.

29 Agricultural Holdings Act 1986 Sch 6 para 9(1)(a) (as amended: see note 15).

30 Agricultural Holdings Act 1986 Sch 6 para 9(1)(b).

31 Agricultural Holdings Act 1986 Sch 6 para 9(1). Schedule 6 para 9(1) also applies to Sch 6 para 7 (see the text and notes 17-23) (Sch 6 para 9(1)(a) (as amended: see note 15)), and where Sch 6 para 7 applies to a close relative of the deceased or the nominated successor in relation to any time by virtue of the joint occupation of land by his spouse or civil partner or a body corporate and any other person or persons, Sch 6 para 7(2), (3) applies to the relative or successor as if he were the holder of the interest in the land for the time being held by his spouse or civil partner, or the body corporate, as the case may be (Sch 6 para 9(2) (as so amended)).

32 *le* such a tenancy as is mentioned in the Agricultural Holdings Act 1986 Sch 6 para 6(1)(a)-(d) (see heads (a)-(d) in the text).

33 Agricultural Holdings Act 1986 Sch 6 para 10(1)(a).

34 For this purpose 'connected person', in relation to a close relative of the deceased or the nominated successor, means the relative's or successor's spouse or civil partner (Agricultural Holdings Act 1986 Sch 6 para 10(3)(a) (as amended: see note 15)) or a body corporate controlled by the relative or successor (Sch 6 para 10(3)(b)).

35 Agricultural Holdings Act 1986 Sch 6 para 10(1)(b). The restrictions referred to in the text are those mentioned in Sch 6 para 6(1)(a)-(f) (see heads (a)-(g) in the text).

36 Agricultural Holdings Act 1986 Sch 6 para 10(1). This is the case unless the tenancy or licence was granted by the person or persons referred to in Sch 6 para 10(1) (see the text and notes 32-35) and one or more other persons who were at the time it was granted entitled to occupy the land as mentioned in Sch 6 para 10(1)(b), in which case the provisions of Sch 6 para 7(2), (3) (see note 23) apply to the close relative or the nominated successor as if the land were jointly occupied by him and the said other person or persons as holders of their respective interests for the time being in the land: Sch 6 para 10(2). For the purposes of Sch 6 para 10(2) (and of Sch 6 para 7(2), (3)) any interest in the land for the time being held by a connected person by whom the tenancy or licence was granted must be attributed to the relative or successor: Sch 6 para 10(3).

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#### **404. Special provisions regarding the occupancy condition.**

Provision is made for a person who does not fully satisfy the livelihood condition<sup>1</sup> still to be treated as an eligible person for the purposes of an application to succeed to a tenancy<sup>2</sup>. Any surviving close relative<sup>3</sup> of the deceased who for some part of the seven years ending with the date of death engaged (whether full-time or part-time) in agricultural work on the holding<sup>4</sup>, who satisfies the occupancy condition<sup>5</sup> and who satisfies the livelihood condition, though not fully, to a material extent<sup>6</sup>, may within the period of three months beginning with the day after the date of death apply to the agricultural land tribunal<sup>7</sup> for a determination that he is to be treated as an eligible person for the purposes of the provisions relating to succession on death or retirement<sup>8</sup>, and if on such an application the tribunal is satisfied that the applicant satisfies the occupancy condition and satisfies the livelihood condition to a material extent<sup>9</sup>, and it appears to the tribunal that in all the circumstances it would be fair and reasonable for the applicant to be able to apply<sup>10</sup> for a direction entitling him to a tenancy of the holding<sup>11</sup>, the tribunal must determine that he is to be treated as an eligible person for the purposes of the provisions relating to succession on death or retirement, but must otherwise dismiss the application<sup>12</sup>.

1 As to the livelihood condition see PARA 402.

2 See the Agricultural Holdings Act 1986 s 41; and the text and notes 3-12.

3 As to the meaning of 'close relative' see PARA 402 note 2.

4 The references in the Agricultural Holdings Act 1986 s 41(1) and s 41(6) to agricultural work carried out by a person on the holding include agricultural work carried out by him from the holding and other work carried out by him on or from the holding which is of a description approved in writing by the landlord after 19 October 2006: s 41(7) (added by SI 2006/2805, art 5(2)). 19 October 2006 is the date on which this amendment came into force: see art 1(1)(b).

5 Agricultural Holdings Act 1986 s 41(1)(a). As to the occupancy condition see PARA 402.

6 Agricultural Holdings Act 1986 s 41(1)(b). Without prejudice to the generality of this provision, cases where the livelihood condition might be less than fully satisfied include cases where the close relative's agricultural work on the holding fell short of providing him with his principal source of livelihood because the holding was too small: s 41(6). See *Thomson v Church Comrs for England* [2006] EWHC 1773 (Admin), [2006] All ER (D) 162 (Jul).

7 As to agricultural land tribunals see PARAS 670-673.

8 Agricultural Holdings Act 1986 s 41(2). As to the provisions relating to succession on death or retirement see PARAS 405-408 (death) and PARAS 409-412 (retirement).

9 Agricultural Holdings Act 1986 s 41(3)(a).

10 le under the Agricultural Holdings Act 1986 s 39 (see PARA 405).

11 Agricultural Holdings Act 1986 s 41(3)(b).

12 Agricultural Holdings Act 1986 s 41(3). In relation to a person in respect of whom the agricultural land tribunal has determined as mentioned in s 41(3), ss 36-48 apply as if he were an eligible person: s 41(4). A person to whom these provisions apply may make an application under s 39 (see PARA 405) as well as an application under s 41; and if the tribunal determines that a person who has made an application under s 39 is to be treated as an eligible person for these purposes, the application under s 39 must (without prejudice to s 41(4)) be treated as made by an eligible person: s 41(5).

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## ***B. SUCCESSION ON DEATH***

### **405. Application for succession.**

Any eligible person<sup>1</sup> may apply to the agricultural land tribunal<sup>2</sup> for a direction entitling him to the tenancy<sup>3</sup> of a holding<sup>4</sup> on the death of the previous tenant<sup>5</sup>. Any such application must be made within three months beginning with the day after the date of death<sup>6</sup>. Where only one application is made the tribunal must satisfy itself that the applicant was an eligible person at the date of death<sup>7</sup> and that he has not subsequently ceased to be so<sup>8</sup>, and must then determine whether he is a suitable person to become the tenant<sup>9</sup>. If there is more than one applicant, the tribunal must follow that procedure in relation to each as if he were the only applicant<sup>10</sup>. Where only one is suitable, the tribunal must give a direction that that applicant is entitled to the tenancy<sup>11</sup>. Where more than one is suitable the tribunal must determine which is the most suitable<sup>12</sup> and give a direction accordingly<sup>13</sup>. In that case the tribunal has an alternative power, with the landlord's consent, to direct a joint tenancy of the holding between up to four specified applicants<sup>14</sup>, and in any case an applicant or applicants may agree to a direction specifying a tenancy or joint tenancy of part of the holding<sup>15</sup>. If the applicants include a person validly designated<sup>16</sup> by the deceased in his will<sup>17</sup> as the person he wished to succeed him as tenant of the holding, the tribunal must first determine the suitability of that applicant, and must proceed to the other applicants only if that applicant is unsuitable<sup>18</sup>.

Special provision is made as to the order of hearing of applications where the deceased was tenant of more than one holding<sup>19</sup>.

1 As to the meaning of 'eligible person' see PARA 402.

2 As to agricultural land tribunals see PARAS 670-673.

3 As to the meaning of 'tenancy' see PARA 403 note 2.

4 As to the meaning of 'holding' see PARA 402 note 3.

- 5 Agricultural Holdings Act 1986 s 36(1). As to the meaning of 'tenant' see PARA 323 note 5. As to the making of orders generally see PARA 332 note 5. See also *Kellett v Alexander* (1980) 257 Estates Gazette 494.
- 6 Agricultural Holdings Act 1986 s 39(1). 'Date of death' means the date of death of the deceased: s 35(2).
- 7 Agricultural Holdings Act 1986 s 39(2)(a).
- 8 Agricultural Holdings Act 1986 s 39(2)(b).
- 9 Agricultural Holdings Act 1986 s 39(2). In determining whether the applicant is a suitable person to be granted the tenancy regard must be had to all relevant matters, including the applicant's training in or practical experience of agriculture, his age, physical health and financial standing, and the views stated by the landlord on the applicant's suitability: s 39(8). The landlord must be given an opportunity to state his views: s 39(7). As to the meaning of 'agriculture' see PARA 324. As to the meaning of 'landlord' see PARA 323 note 7.
- 10 Agricultural Holdings Act 1986 s 39(3). See, however, the text and notes 16-18.
- 11 Agricultural Holdings Act 1986 s 39(5).
- 12 Agricultural Holdings Act 1986 s 39(6)(a).
- 13 Agricultural Holdings Act 1986 s 39(6)(b).
- 14 Agricultural Holdings Act 1986 s 39(9).
- 15 Agricultural Holdings Act 1986 s 39(10).
- 16 A person is to be taken to be validly designated as the person the deceased wishes to succeed him as tenant only if the will contains an effective bequest of the tenancy to that person or, not containing such bequest, specifically mentions the holding and exclusively designates that person as the person the deceased wishes to succeed him as tenant: Agricultural Holdings Act 1986 s 40(1). See further s 40(2)-(4).
- 17 'Will' includes codicil: Agricultural Holdings Act 1986 s 40(1).
- 18 Agricultural Holdings Act 1986 s 39(4).
- 19 See the Agricultural Holdings Act 1986 s 42.

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#### **406. Notice to quit by landlord.**

Where the landlord<sup>1</sup> has given notice to quit<sup>2</sup> which falls within Case G<sup>3</sup>, that notice is effective provided no application to succeed to the tenancy<sup>4</sup> has been made within the required time<sup>5</sup> or, such application having been made, either no applicant is found by the agricultural land tribunal<sup>6</sup> to be suitable<sup>7</sup>, or alternatively the tribunal has consented<sup>8</sup> to the operation of the notice to quit<sup>9</sup>.

Before giving a direction entitling any person to succeed to a tenancy in a case falling within Case G the tribunal must afford the landlord opportunity to apply for consent to the operation of the notice to quit<sup>10</sup>.

Where the tribunal consents to the operation of a notice to quit it must dismiss any application for succession in relation to the holding or part to which the notice to quit relates<sup>11</sup>. Where on an application for succession the applicant has agreed to accept a direction entitling him to a tenancy of part only of the holding<sup>12</sup> in question<sup>13</sup>, the tribunal must give consent to the operation of the notice to quit in relation to that part of the holding excluded from the direction<sup>14</sup>.

In certain circumstances the operation of the notice to quit may be postponed<sup>15</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the service of notices see PARA 328 note 4.
- 3 See PARA 383.
- 4 As to the meaning of 'tenancy' see PARA 403 note 2.
- 5 Agricultural Holdings Act 1986 s 43(1)(a). As to the required time see s 39(1); and PARA 405.
- 6 As to agricultural land tribunals see PARAS 670-673.
- 7 Agricultural Holdings Act 1986 s 43(1)(b)(i). As to the suitability of an applicant see PARA 402.
- 8 le under the Agricultural Holdings Act 1986 s 44 (see the text and notes 10-15).
- 9 Agricultural Holdings Act 1986 s 43(1)(b)(ii). Such consent may validly take effect in relation to part only of a holding: s 43(2).
- 10 Agricultural Holdings Act 1986 s 44(1). The tribunal must not entertain an application for consent to which s 43(1) (see the text and notes 1-9) applies except in pursuance of s 44(1): s 44(3). The grounds for the granting of consent are those contained in s 27 (see PARA 375): s 44(2).
- 11 Agricultural Holdings Act 1986 s 44(4). This is subject to s 44(5) (as to which see the text and notes 12-14).
- 12 As to the meaning of 'holding' see PARA 402 note 3.
- 13 le under the Agricultural Holdings Act 1986 s 39(10) (see PARA 405).
- 14 Agricultural Holdings Act 1986 s 44(5).
- 15 See Agricultural Holdings Act 1986 s 44(6), (7).

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#### **407. Effect of direction entitling applicant to a tenancy.**

A direction by the agricultural land tribunal<sup>1</sup> entitling the applicant or applicants to a tenancy<sup>2</sup> of the holding<sup>3</sup> entitles him or them to a tenancy or joint tenancy as from the relevant time<sup>4</sup>, on the same terms as those on which the holding was let immediately before it ceased to be let under the contract of tenancy<sup>5</sup> under which it was let at the date of death<sup>6</sup>. If on the date of death the holding was held by the deceased for a fixed term of years and the holding is subject to a direction of entitlement to succession, the tenancy takes effect with the terms on which it was let prior to the death, except that it is treated as if before the date of the death it had become a tenancy from year to year<sup>7</sup>. The terms of any tenancy which is the subject of a succession direction are deemed to include, if they do not do so already, a covenant by the tenant not to assign, sub-let or part with possession of the holding or any part of it without the landlord's written consent<sup>8</sup>. Any tenancy of the holding inconsistent with the tenancy which is the subject of the succession direction must, if it would not otherwise cease at the relevant time, cease at that time as though it had been terminated at that time by a valid notice to quit given by the tenant<sup>9</sup>. A direction ceases to have effect if the person or persons whom it entitles to a tenancy becomes or become tenant of the holding before the relevant time under a



tenancy granted by the landlord and accepted by the person or persons concerned<sup>10</sup>. The rights conferred on any person by a direction (as distinct from rights acquired after he has become tenant) are not capable of assignment<sup>11</sup>. Relevant provisions of the Agricultural Holdings Act 1986<sup>12</sup> are applied where the person entitled to a tenancy under a direction following the death of the previous tenant himself dies before the relevant time<sup>13</sup>.

1 As to agricultural land tribunals see PARAS 670-673.

2 As to the meaning of 'tenancy' see PARA 403 note 2.

3 As to the meaning of 'holding' see PARA 402 note 3.

4 The 'relevant time' is the end of the 12 months immediately following the end of the year of tenancy in which the deceased died, except where a notice to quit falling within Case G (see PARA 383) was given to the tenant which would have terminated the tenancy at a time after the end of those 12 months, in which case it means that time: Agricultural Holdings Act 1986 s 46(1). See further s 46(2). As to the meaning of 'tenant' see PARA 323 note 5.

5 As to the meaning of 'contract of tenancy' see PARA 325.

6 Agricultural Holdings Act 1986 ss 45(1), 47(1). As to the meaning of 'date of death' see PARA 405 note 6. Such tenancy is deemed to be granted at that time by the landlord and accepted by the person or persons entitled: s 45(1). Where a supervening interest has been created by the landlord, the entitlement to the tenancy is deemed to have been granted by the person entitled to that interest: see s 45(2)-(4). As to the meaning of 'landlord' see PARA 323 note 7.

7 Agricultural Holdings Act 1986 s 47(2).

8 Agricultural Holdings Act 1986 s 47(3).

9 Agricultural Holdings Act 1986 s 45(5). As to the service of notices see PARA 328 note 4.

10 Agricultural Holdings Act 1986 s 45(6). In such a case the provisions of s 48 as to arbitration (see PARA 408) do not apply. As to the relevant time see note 4.

11 Agricultural Holdings Act 1986 s 45(7).

12 I.e. the Agricultural Holdings Act 1986 ss 34-48 (see PARA 400 et seq).

13 See the Agricultural Holdings Act 1986 s 45(8); and the Agriculture (Miscellaneous Provisions) Act 1976 (Application of Provisions) Regulations 1977, SI 1977/1215 (which have effect as if made under the Agricultural Holdings Act 1986 s 45(8)).

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#### **408. Arbitration on terms of new tenancy.**

Where the agricultural land tribunal<sup>1</sup> gives a direction entitling an applicant to a tenancy<sup>2</sup>, the provisions described below apply<sup>3</sup>.

At any time within the prescribed period<sup>4</sup> the landlord<sup>5</sup> or tenant<sup>6</sup> may by written notice served<sup>7</sup> on the other demand a reference to arbitration<sup>8</sup> in respect of one or both of the following questions<sup>9</sup>:

- 155 (1) what variations in the terms of the tenancy are justifiable having regard to the circumstances of the holding and the length of time since the holding was first let on those terms (question (a))<sup>10</sup>; and
- 156 (2) what rent should be or have been properly payable at the relevant time (question (b))<sup>11</sup>.

Where question (a) is referred to arbitration, with or without question (b), the arbitrator must determine what variations are justifiable<sup>12</sup> and include in his award any provisions necessary to entitle the landlord or tenant to recover compensation paid or payable<sup>13</sup>, and with effect from the relevant time, he must vary the terms or direct that they are to remain unchanged<sup>14</sup>. Where, in a reference on question (a) but not question (b), the arbitrator includes a provision in the terms of the tenancy (not being a provision as to compensation), and it appears to him that by reason thereof it would be equitable to vary the rent accordingly, he may do so with effect from the relevant time<sup>15</sup>. Where question (b) is referred to arbitration, with or without question (a), the arbitrator must determine what rent should be or have been properly payable<sup>16</sup> in respect of the holding at the relevant time, and must accordingly increase or reduce the rent or direct that it is to remain unchanged<sup>17</sup>.

On any reference the arbitrator may include in his award any further provisions relating to the tenancy to which the tenant is entitled or which he has obtained under a direction, as may be agreed between the landlord and tenant<sup>18</sup>. If the date of the award is before the relevant time, the provisions as to the effect of a direction entitling an applicant to the tenancy<sup>19</sup> will have effect subject to and in accordance with the award<sup>20</sup>. If the award is made after the relevant time it will have effect as if its terms were contained in an agreement in writing between the landlord and the tenant and having effect as from the relevant time<sup>21</sup>.

1 As to agricultural land tribunals see PARAS 670-673.

2 As to the giving of such directions see the Agricultural Holdings Act 1986 s 39; and PARA 405.

3 Agricultural Holdings Act 1986 s 48(1). The provisions of s 48(3)-(12) (see the text and notes 4-21) apply, mutatis mutandis, to succession on the retirement of the previous tenant as they apply in relation to the death of the previous tenant: see s 56(3), (4); and PARA 411.

4 The 'prescribed period' is the period between the giving of the direction and the end of the three months immediately following the relevant time, or the end of the three months immediately following the date of the direction, whichever last occurs: Agricultural Holdings Act 1986 s 48(2). As to the meaning of the 'relevant time' see PARA 407 note 4.

5 For these purposes 'landlord' means the landlord of the holding: Agricultural Holdings Act 1986 s 48(2). As to the meaning of 'landlord' generally see PARA 323 note 7. As to the meaning of 'holding' see PARA 402 note 3.

6 For these purposes 'tenant' means the person or persons entitled to a tenancy or joint tenancy of the holding by virtue of the direction: Agricultural Holdings Act 1986 s 48(2). As to the meaning of 'tenant' generally see PARA 323 note 5. Where in accordance with s 39(10) (see PARA 405) the tenancy to which a direction under s 39 entitles the person or persons concerned is a tenancy of part of the deceased's holding, references in ss 45, 48 to 'holding' must be read as references to the whole of the deceased's holding or to the part of that holding to which the direction relates, as the context requires: ss 46(3), 48(2). As to the meaning of 'tenancy' see PARA 403 note 2.

7 As to the service of notices see PARA 328 note 4.

8 As to arbitrations generally see PARA 469 et seq.

9 Agricultural Holdings Act 1986 s 48(3).

10 Agricultural Holdings Act 1986 s 48(4)(a).

11 Agricultural Holdings Act 1986 s 48(4)(b). In this context the rent properly payable is the rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing

tenant, taking into account all relevant factors including the terms of the tenancy or prospective tenancy (including terms as to rent) and other matters specified in Sch 2 para 1(1) (see PARA 338): s 48(9).

12 Agricultural Holdings Act 1986 s 48(5)(a).

13 Agricultural Holdings Act 1986 s 48(5)(b). This compensation is: (1) paid or payable by the landlord, whether under the Agricultural Holdings Act 1986 or by agreement or custom, on the termination of the deceased's tenancy (s 48(8)(a)); or (2) paid or payable to the landlord, whether under the Act or by agreement, on that termination, in respect of any dilapidation or deterioration of, or damage to, any part of the holding or anything in or on the holding which the tenant is or will be liable to make good under the terms of his tenancy (s 48(8)(b)). As to the termination of an agricultural tenancy see PARA 328 note 1.

14 Agricultural Holdings Act 1986 s 48(5).

15 Agricultural Holdings Act 1986 s 48(6).

16 As to the rent properly payable see note 11.

17 Agricultural Holdings Act 1986 s 48(7).

18 Agricultural Holdings Act 1986 s 48(10).

19 In the provisions of the Agricultural Holdings Act 1986 s 47(1) (see PARA 407).

20 Agricultural Holdings Act 1986 s 48(11).

21 Agricultural Holdings Act 1986 s 48(12).

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### ***C. SUCCESSION ON RETIREMENT***

#### **409. Right to retirement succession.**

The tenant<sup>1</sup>, or all the tenants in the case of a joint tenancy, may serve on the landlord<sup>2</sup> a notice (the 'retirement notice')<sup>3</sup> indicating, in whatever terms, his or their wish that a single eligible person<sup>4</sup> named in the notice succeed him or them as from the date specified in the notice<sup>5</sup>. In addition to being a tenancy to which the general provisions as to succession apply<sup>6</sup>, it must be a tenancy from year to year<sup>7</sup>.

The provisions excluding the right to succeed to a tenancy on the death of a tenant<sup>8</sup> apply also in respect of the retirement of a tenant<sup>9</sup>, with additional exclusions where:

- 157 (1) the retiring tenant<sup>10</sup> has at any time given any other retirement notice in respect of the holding<sup>11</sup> or a related holding<sup>12</sup> and an application to become tenant has been made by any nominated successor<sup>13</sup> in respect of that notice<sup>14</sup>;
- 158 (2) at the retirement date<sup>15</sup> the retiring tenant is under 65, unless at that date he will by reason of bodily or mental infirmity, which is likely to be permanent<sup>16</sup>, be incapable of conducting the farming of the holding<sup>17</sup> in such a way as to secure fulfilment of the responsibilities to farm in accordance with the rules of good husbandry<sup>18</sup>, and that fact is stated in the notice<sup>19</sup>;
- 159 (3) the holding was already subject to a notice to quit<sup>20</sup> falling within Case B<sup>21</sup>, Case D<sup>22</sup> or Case E<sup>23</sup>, unless it is determined by arbitration<sup>24</sup> that the notice to quit is ineffective or if, on the service of a counter-notice<sup>25</sup>, the agricultural land tribunal<sup>26</sup>

withholds consent to the operation of the notice to quit<sup>27</sup> or the time for applying for such consent has expired without such application having been made<sup>28</sup>.

- 1 As to the meaning of 'tenant' see PARA 400 note 3.
- 2 As to the meaning of 'landlord' see PARA 323 note 7.
- 3 Agricultural Holdings Act 1986 s 49(1)(b), (3). As to the meaning of 'retirement notice' see PARA 402 note 2.
- 4 As to the meaning of 'eligible person' see PARA 402.
- 5 Agricultural Holdings Act 1986 s 49(1)(b). The date so specified must be a date on which the tenancy could have been lawfully terminated by a notice to quit given at the date of the retirement notice; it must fall not less than one year but not more than two years after the date of the notice: s 49(1)(b). As to the meaning of 'tenancy' see PARA 403 note 2.
- 6 As to those provisions see PARA 400.
- 7 Agricultural Holdings Act 1986 s 49(1)(a).
- 8 See the Agricultural Holdings Act 1986 ss 37, 38; and PARA 401.
- 9 Agricultural Holdings Act 1986 s 51(1), which also contains modifications to ss 37, 38 necessary in the case of retirement.
- 10 As to the meaning of 'retiring tenant' see PARA 402 note 2.
- 11 As to the meaning of 'holding' see PARA 402 note 3.
- 12 As to the meaning of 'related holding' see PARA 401 note 5.
- 13 As to the meaning of 'nominated successor' see PARA 402 note 4.
- 14 Agricultural Holdings Act 1986 s 51(2). Applications to become successor are made under s 53 (see PARA 410). An application which is invalidated by virtue of s 52(1), (2) (see note 28), or which is withdrawn or abandoned, is treated as if it were never made: ss 52(5), 53(10).
- 15 As to the meaning of 'retirement date' see PARA 402 note 5.
- 16 Agricultural Holdings Act 1986 s 51(3)(b).
- 17 As to the 'farming' of land see PARA 324.
- 18 As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.
- 19 Agricultural Holdings Act 1986 s 51(3)(a).
- 20 As to the service of notices see PARA 328 note 4.
- 21 See PARA 378.
- 22 See PARA 380.
- 23 See PARA 381.
- 24 As to arbitrations generally see PARA 469 et seq.
- 25 As to a counter-notice to a notice to quit see PARA 374.
- 26 As to agricultural land tribunals see PARAS 670-673.
- 27 As to the giving or withholding of consent to a notice to quit by the agricultural land tribunal see PARA 375.

28 Agricultural Holdings Act 1986 s 51(4), (5). Where the tenancy becomes subject to a valid notice to quit given after the date of the retirement notice but before the hearing of any application for succession by the nominated successor, and the notice:

42 (1) falls within Case C (see PARA 379), in relation to Sch 3 Pt II para 9 or within Case F (see PARA 382) (s 52(1)); or

43 (2) includes a statement that it is founded on a reason within Case B or Case D (s 52(2)),

then the retirement notice is ineffective and no further proceedings may be taken in respect of it; unless, in the case of head (2), the tribunal determines that the notice to quit is ineffective, or on the service of a counter-notice the tribunal withholds consent to the operation of the notice to quit, or the time for applying for such consent has expired without such application having been made (s 52(3)).

Notices to quit not falling within ss 51, 52 do not have effect during the relevant period (ie one month beginning with the day after the date of the retirement notice) or, where an application for succession (see PARA 410) has been made within that period, before the disposal of the application, or, in any event, where a direction of entitlement to succession has been given: see s 54.

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#### **410. Application for retirement succession.**

The nominated successor<sup>1</sup> of a retiring tenant<sup>2</sup> may apply to the agricultural land tribunal<sup>3</sup> for a direction entitling him to a tenancy<sup>4</sup> of the holding<sup>5</sup>. That application must be made within the relevant period<sup>6</sup>. It must be accompanied by a copy of the retirement notice<sup>7</sup> and be signed by both the nominated successor and the retiring tenant (or tenants where the retirement notice was given by joint tenants)<sup>8</sup>. If the retirement notice includes a statement that it is given on the ground of bodily or mental infirmity<sup>9</sup>, the tribunal must, before proceeding with the application, satisfy itself that the retiring tenant will thereby be incapable of conducting the farming of the holding<sup>10</sup> in such a way as to secure fulfilment of the responsibilities to farm in accordance with the rules of good husbandry<sup>11</sup>, and that such incapacity is likely to be permanent<sup>12</sup>. If the tribunal is satisfied that the nominated successor was an eligible person<sup>13</sup> at the date of the giving of the retirement notice<sup>14</sup> and has not ceased to be so since that date<sup>15</sup>, it must then go on to determine whether he is a suitable person to become the tenant of the holding<sup>16</sup>. Before the tribunal makes such a determination the landlord<sup>17</sup> must be given an opportunity to state his views on the suitability of the nominated successor, and in making the determination the tribunal must have regard to all relevant matters, including the nominated successor's training in or practical experience of agriculture<sup>18</sup>, his age, physical health and financial standing<sup>19</sup>, and the views stated by the landlord on his suitability<sup>20</sup>. If the nominated person is determined by the tribunal to be a suitable person, the tribunal must give a direction entitling him to a tenancy of the holding<sup>21</sup>, unless it appears, on an application by the landlord, that greater hardship would be caused by giving the direction than by refusing the nominated successor's application<sup>22</sup>. If the tribunal does not give the direction on the application, then the retirement notice is ineffective<sup>23</sup>. If the application by the nominated successor is abandoned or withdrawn it is treated as never having been made<sup>24</sup>.

1 As to the meaning of 'nominated successor' see PARA 402 note 4.

2 As to the meaning of 'retiring tenant' see PARA 402 note 2.

3 As to agricultural land tribunals see PARAS 670-673.

4 As to the meaning of 'tenancy' see PARA 403 note 2.

5 Agricultural Holdings Act 1986 s 50(1). As to the meaning of 'holding' see PARA 402 note 3. This right is subject to s 57(2) (death of retiring tenant: see PARA 412), and is excluded in the circumstances described in PARA 409. As to the making of orders generally see PARA 332 note 5. See also *Kellett v Alexander* (1980) 257 Estates Gazette 494.

6 Agricultural Holdings Act 1986 s 53(1). For these purposes the 'relevant period' is generally the period of one month beginning with the day after the date of the giving of the retirement notice: s 53(2).

7 Agricultural Holdings Act 1986 s 53(3)(a). As to the meaning of 'retirement notice' see PARA 402 note 2.

8 Agricultural Holdings Act 1986 s 53(3)(b).

9 le under the Agricultural Holdings Act 1986 s 51(3) (see PARA 409).

10 As to the meaning of 'holding' see PARA 402 note 3. As to the 'farming' of land see PARA 324.

11 Agricultural Holdings Act 1986 s 53(4)(a). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

12 Agricultural Holdings Act 1986 s 53(4)(b).

13 As to the meaning of 'eligible person' see PARA 402. It is to be noted in particular that no application under s 42 to be treated as eligible (see PARA 405) is possible in the case of retirement succession.

14 Agricultural Holdings Act 1986 s 53(5)(a).

15 Agricultural Holdings Act 1986 s 53(5)(b).

16 Agricultural Holdings Act 1986 s 53(5).

17 As to the meaning of 'landlord' see PARA 323 note 7.

18 Agricultural Holdings Act 1986 s 53(6)(a).

19 Agricultural Holdings Act 1986 s 53(6)(b). As to the meaning of 'agriculture' see PARA 324.

20 Agricultural Holdings Act 1986 s 53(6)(c).

21 Agricultural Holdings Act 1986 s 53(7).

22 Agricultural Holdings Act 1986 s 53(8).

23 Agricultural Holdings Act 1986 s 53(9).

24 Agricultural Holdings Act 1986 s 53(10).

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#### **411. Effect of direction for succession on retirement.**

A direction by the agricultural land tribunal<sup>1</sup> entitling the nominated successor<sup>2</sup> to a tenancy<sup>3</sup> of the holding<sup>4</sup> so entitles that successor with effect from the relevant time<sup>5</sup> on the same terms as those on which the holding was let immediately before it ceased to be let under the contract of tenancy<sup>6</sup> under which it was let at the date of the giving of the retirement notice<sup>7</sup>. Such a tenancy is accordingly deemed to be granted at that time by the landlord and accepted by the nominated successor<sup>8</sup>. Any tenancy of the holding inconsistent with the tenancy which is the subject of the succession direction must, if it would not otherwise cease at the relevant time,

cease at that time as though it had been terminated at that time by a valid notice to quit given by the tenant<sup>9</sup>. The rights conferred on any person by a direction (as distinct from rights acquired after he has become tenant<sup>10</sup>) are not capable of assignment<sup>11</sup>. Provision may be made by regulations for the application of the statutory provisions<sup>12</sup> to cases where the nominated successor dies before the relevant time<sup>13</sup>.

The terms of any tenancy which is the subject of a succession direction are deemed to include, if they do not do so already, a covenant by the tenant not to assign, sub-let or part with possession of the holding or any part of it without the landlord's written consent<sup>14</sup>.

There is provision for the determination by arbitration<sup>15</sup> of certain questions arising on the giving of a direction of entitlement to succession<sup>16</sup>.

1     I.e. a direction under the Agricultural Holdings Act 1986 s 53 (see PARA 410). As to agricultural land tribunals see PARAS 670-673.

2     As to the meaning of 'nominated successor' see PARA 402 note 4.

3     As to the meaning of 'tenancy' see PARA 403 note 2.

4     As to the meaning of 'holding' see PARA 402 note 3.

5     'Relevant time' means the retirement date, except that in certain circumstances the tribunal is empowered to alter it to either three months after the retirement date or three months after the giving of the direction: Agricultural Holdings Act 1986 s 55(8). As to the meaning of 'retirement date' see PARA 402 note 5.

6     As to the meaning of 'contract of tenancy' see PARA 325.

7     Agricultural Holdings Act 1986 ss 55(1), 56(1). As to the meaning of 'retirement notice' see PARA 402 note 2.

8     Agricultural Holdings Act 1986 s 55(1). Where a supervening interest has been created by the landlord, the entitlement to the tenancy is deemed to have been granted by the person entitled to that interest: see s 55(2)-(4). As to the meaning of 'landlord' see PARA 323 note 7.

9     Agricultural Holdings Act 1986 s 55(5). As to the service of notices see PARA 328 note 4.

10    As to the meaning of 'tenant' see PARA 323 note 5.

11    Agricultural Holdings Act 1986 s 55(6).

12    I.e. the Agricultural Holdings Act 1986 ss 37(6), 50-58 (see PARA 400 et seq).

13    Agricultural Holdings Act 1986 s 55(7). At the date at which this volume states the law no such regulations had been made. As to the making of regulations generally see PARA 332 note 5.

14    Agricultural Holdings Act 1986 s 56(2).

15    As to arbitrations generally see PARA 469 et seq.

16    See the Agricultural Holdings Act 1986 s 56(3), (4), applying, with modifications, the provisions of s 48(3)-(12) (as to which see PARA 408) to succession on retirement.

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#### **412. Death of retiring tenant.**

Where the retiring tenant<sup>1</sup> dies after giving his retirement notice<sup>2</sup> but when no application by a nominated successor<sup>3</sup> has been made or before the final disposal of such application, the retirement notice is ineffective and no further proceedings may be taken with regard to it; the succession provisions normally applicable on the death of a tenant<sup>4</sup> apply in such a case<sup>5</sup>. If the retiring tenant dies when the agricultural land tribunal<sup>6</sup> has already given a direction that the nominated successor is entitled to the tenancy<sup>7</sup> but before the retirement date, that direction stands<sup>8</sup>. If the tribunal has disposed of the application other than by the giving of a direction, the provisions as to succession on the death of the tenant apply<sup>9</sup>. The death of only one of joint retiring tenants does not affect the rights of the nominated successor<sup>10</sup>.

Where the retiring tenant, being the sole or sole surviving tenant, dies<sup>11</sup> and the nominated successor is entitled under a direction to become the tenant of the holding<sup>12</sup>, then for the purpose of determining whether, in relation to any other agricultural holding<sup>13</sup> held by the retiring tenant at the date of his death<sup>14</sup>, the nominated successor is a person in whose case the occupancy condition<sup>15</sup> is satisfied, the nominated successor is deemed to be in occupation of the holding<sup>16</sup>.

- 1 As to the meaning of 'retiring tenant' see PARA 402 note 2.
- 2 Agricultural Holdings Act 1986 s 57(1). As to the meaning of 'retirement notice' see PARA 402 note 2.
- 3 As to the meaning of 'nominated successor' see PARA 402 note 4.
- 4 As to the meaning of 'tenant' see PARA 323 note 5.
- 5 Agricultural Holdings Act 1986 s 57(2).
- 6 As to agricultural land tribunals see PARAS 670-673.
- 7 As to the meaning of 'tenancy' see PARA 403 note 2.
- 8 Agricultural Holdings Act 1986 s 57(3).
- 9 Agricultural Holdings Act 1986 s 57(4).
- 10 Agricultural Holdings Act 1986 s 57(5).
- 11 Agricultural Holdings Act 1986 s 58(a).
- 12 Agricultural Holdings Act 1986 s 58(b). As to the meaning of 'holding' see PARA 402 note 3.
- 13 As to the meaning of 'agricultural holding' see PARA 323.
- 14 As to the meaning of 'date of death' see PARA 405 note 6.
- 15 I.e the condition set out in the Agricultural Holdings Act 1986 s 36(3)(b) (see PARA 402).
- 16 Agricultural Holdings Act 1986 s 58.

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## ***D. SUCCESSION WITHOUT APPLICATION TO THE AGRICULTURAL LAND TRIBUNAL***

### **413. Inter vivos agreements.**



A succession may take place by agreement where the landlord<sup>1</sup> and tenant<sup>2</sup> agree that the tenant should retire and a new tenancy be granted<sup>3</sup>, or the existing tenancy assigned<sup>4</sup>, to a person who at that time would have been a close relative<sup>5</sup> had the tenant died immediately before the relevant grant or assignment<sup>6</sup>. There is no requirement that the tenant should have reached retirement age and the close relative does not have to satisfy the other tests for eligibility or suitability: this arrangement is deemed for the purposes of the two succession rule<sup>7</sup> to be an occasion on which a tenancy was obtained on the death of the tenant by virtue of a direction from the agricultural land tribunal<sup>8</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 Agricultural Holdings Act 1986 s 37(2)(a).

4 Agricultural Holdings Act 1986 s 37(2)(b).

5 As to the meaning of 'close relative' see PARA 402 note 2.

6 See the Agricultural Holdings Act 1986 s 37(2); and PARA 401.

7 As to the two succession rule see PARA 401 head (3). In the case of certain historic transactions, the two succession rule is modified to reflect the legal provisions applicable at the time of that transaction: see the Agricultural Holdings Act 1986 s 37(7), (8); and PARA 401.

8 Agricultural Holdings Act 1986 s 37(2). As to agricultural land tribunals see paras 670-673.

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## **(vii) Compensation**

### **A. IN GENERAL**

#### **414. Source of right to compensation.**

At common law an agricultural tenant is not entitled to compensation<sup>1</sup> from his landlord for improvements or acts of husbandry of which the landlord obtains the benefit when the tenant quits the holding<sup>2</sup>. This rule may be modified by the custom of the country<sup>3</sup>, and the parties may themselves provide for compensation in their agreement. The right to compensation is, however, now almost wholly regulated by statute to the exclusion of both custom and agreement, though a written agreement may entitle a claimant to compensation where he has no right to it under statute<sup>4</sup>.

1 As to compensation for damage by game see PARA 424.

2 *Wigglesworth v Dallison* (1779) 1 Doug KB 201.

3 *Wigglesworth v Dallison* (1779) 1 Doug KB 201.

4 As to the right to compensation in respect of tenancies governed by the Agricultural Holdings Act 1986 see PARA 414 et seq.

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#### **415. Effect of agreements as to compensation.**

Where the Agricultural Holdings Act 1986 provides for compensation<sup>1</sup>, a landlord<sup>2</sup> or tenant<sup>3</sup> is entitled to compensation in accordance with the statutory provisions and not otherwise<sup>4</sup>, save as expressly provided by the Act, and is so entitled notwithstanding any agreement to the contrary<sup>5</sup>.

Where the landlord and tenant enter into an agreement in writing for any such variation of the terms of the contract of tenancy<sup>6</sup> as could be made by the direction or order of an arbitrator<sup>7</sup> in connection with the amount of land to be maintained as permanent pasture<sup>8</sup>, the agreement may provide for the exclusion of compensation<sup>9</sup>.

In the case of long term improvements begun on or after 1 March 1948<sup>10</sup> for which compensation is payable, the landlord and tenant may agree in writing to substitute a different measure of compensation from that laid down in the Act<sup>11</sup>.

In the case of tenant right matters<sup>12</sup>, the parties may in a written contract of tenancy substitute for the measure of compensation contained in the Act an alternative method of calculation for the compensation<sup>13</sup>.

Where the Act makes no provision for compensation, nothing therein is to be construed as disentitling a tenant or a landlord to compensation, but no claim for compensation in such a case is enforceable except under an agreement in writing, other than a claim by a tenant in respect of a tenant right matter<sup>14</sup> where the tenant entered into occupation of the holding before 1 March 1948 and does not give notice electing that the relevant statutory provision<sup>15</sup> is to apply to him<sup>16</sup>.

A provision in an agreement which shortens the time within which a claim for compensation for improvements is to be made<sup>17</sup>, or which allows for the giving of a notice so short a period as to prevent the tenant from giving the requisite statutory notices in respect of any claims for compensation<sup>18</sup>, or which permits re-entry without notice<sup>19</sup>, is void. An agreement which expressly states that a holding is not to be treated as a market garden so as to exclude a claim for compensation for fruit trees and bushes<sup>20</sup> is not avoided by the Act, as the right to claim compensation does not arise<sup>21</sup>.

1 For the statutory provisions as to compensation see PARA 418 et seq.

2 As to the meaning of 'landlord' see PARA 323 note 7.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Cf *Dean v Secretary of State for War* [1950] 1 All ER 344, CA, where a claim for compensation for disturbance under the Agricultural Holdings Act 1923 s 12(6) (repealed) was held to be recoverable under the terms of an agreement in excess of the statutory limits.

5 Agricultural Holdings Act 1986 s 78(1). See *Mears v Callender* [1901] 2 Ch 388.

6 As to the meaning of 'contract of tenancy' see PARA 325.

7 As to arbitrations generally see PARA 469 et seq.

- 8    le under the Agricultural Holdings Act 1986 s 14 (see PARA 341).
- 9    Agricultural Holdings Act 1986 s 78(2).
- 10   le the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 11   Agricultural Holdings Act 1986 s 67(2). Long term improvements are specified in s 64, Sch 7: see further PARA 432.
- 12   le the matters specified in the Agricultural Holdings Act 1986 s 65, Sch 8 Pt II (see PARA 433).
- 13   Agricultural Holdings Act 1986 s 66(4).
- 14   le one specified in the Agricultural Holdings Act 1986 Sch 8 paras 7-10 (see PARA 433).
- 15   le the Agricultural Holdings Act 1986 s 65(1).
- 16   Agricultural Holdings Act 1986 s 78(3). See Sch 12 paras 6-8; and PARA 435.
- 17   *Cathcart v Chalmers* [1911] AC 246, HL.
- 18   *Re Disraeli Agreement, Cleasby v Park Estate (Hughenden) Ltd* [1939] Ch 382, [1938] 4 All ER 658.
- 19   *Coates v Diment* [1951] 1 All ER 890; *Parry v Million Pigs Ltd* (1980) 260 Estates Gazette 281.
- 20   le under the Agricultural Holdings Act 1986 s 79(1), Sch 12 para 10 (see PARA 468).
- 21   *Re Masters and Duveen* [1923] 2 KB 729, CA.

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#### **416. Exclusion of compensation for pasture provided in pursuance of order.**

No compensation is payable to a tenant<sup>1</sup> under statute, custom or agreement in respect of anything done in pursuance of an order<sup>2</sup> made consequent on a direction by an arbitrator<sup>3</sup> reducing the area of land which under the contract of tenancy<sup>4</sup> is to be maintained as permanent pasture<sup>5</sup>.

- 1    As to the meaning of 'tenant' see PARA 323 note 5.
- 2    le under the Agricultural Holdings Act 1986 s 14(4) (see PARA 341).
- 3    As to arbitrations generally see PARA 469 et seq.
- 4    As to the meaning of 'contract of tenancy' see PARA 325.
- 5    Agricultural Holdings Act 1986 s 76(1), (2).

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#### **417. Exclusion of compensation for improvements under custom.**

A landlord<sup>1</sup> or tenant<sup>2</sup> of an agricultural holding<sup>3</sup> is not entitled under custom to any compensation from his tenant or landlord for any improvement, whether or not the improvement is one which qualifies for statutory compensation, or for any tenant right matters specified in the Agricultural Holdings Act 1986<sup>4</sup> or otherwise<sup>5</sup>. This provision does not apply to compensation for long term improvements<sup>6</sup> or short term improvements for which no consent is required<sup>7</sup>, begun before 1 March 1948<sup>8</sup>, or to compensation for the specified tenant right matters, where the tenant entered into occupation of his holding before that date and does not elect<sup>9</sup> that the Act should apply to him as regards those matters<sup>10</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 As to the meaning of 'agricultural holding' see PARA 323.

4 I.e. in the Agricultural Holdings Act 1986 Sch 8 Pt II: see PARA 433. See also Sch 12 para 8; the text and notes 6-10; and PARA 442.

5 Agricultural Holdings Act 1986 s 77(1).

6 I.e. improvements of a kind specified in the Agricultural Holdings Act 1986 Sch 7 (see PARA 432).

7 I.e. improvements of a kind specified in the Agricultural Holdings Act 1986 Sch 8 Pt I (see PARA 432).

8 The date mentioned in the text is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see the Agriculture Act 1947 s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

9 As to the time within which election is to be made see PARA 435.

10 Agricultural Holdings Act 1986 s 77(2).

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### ***B. STATUTORY RIGHT TO COMPENSATION ON QUITTING HOLDING***

#### **418. Scope of statutory compensation.**

Compensation under the Agricultural Holdings Act 1986 is payable to tenants<sup>1</sup> on quitting their holdings<sup>2</sup> for disturbance<sup>3</sup>, for the continuous adoption of a special system of farming<sup>4</sup>, for the making of specified improvements and for certain tenant right matters<sup>5</sup>. Where compensation is payable for disturbance, additional compensation to assist in the reorganisation of the tenant's affairs is also generally payable<sup>6</sup>. A right to compensation is also given to landlords<sup>7</sup> for deterioration or dilapidation of the holding due to the tenant's failure to farm in accordance with the rules of good husbandry<sup>8</sup>. There is a right to compensation payable to the tenant on quitting the holding in respect of milk quota registered to him in relation to the holding<sup>9</sup>, and provision is also made as to the compulsory acquisition of tenanted land<sup>10</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 See PARA 447.
- 4 See PARAS 451-452.
- 5 See PARA 425 et seq.
- 6 See PARA 447.
- 7 As to the meaning of 'landlord' see PARA 323 note 7.
- 8 See PARA 456 et seq. As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.
- 9 See PARA 423.
- 10 See PARA 607 et seq.

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#### **419. Application to parts of a holding.**

Where the landlord<sup>1</sup> resumes possession of a part of an agricultural holding<sup>2</sup>, whether in pursuance of a provision contained in the contract of tenancy<sup>3</sup> or under statute<sup>4</sup>, the statutory compensation provisions apply to the part as if it were a separate holding which the tenant<sup>5</sup> had quitted in consequence of a notice to quit<sup>6</sup>. Where such possession is taken under a provision in the contract of tenancy the arbitrator<sup>7</sup>, in assessing the amount of compensation payable to the tenant<sup>8</sup>, must take into consideration any benefit or relief allowed to the tenant under the contract of tenancy in respect of the land repossessed by the landlord<sup>9</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 As to the meaning of 'contract of tenancy' see PARA 325.
- 4 This may be:
  - 44 (1) by virtue of the right conferred by the Agricultural Holdings Act 1986 s 31 (see PARA 395) to serve a notice to quit part of a holding (s 74(1));
  - 45 (2) by virtue of consent given by the agricultural land tribunal consequent on a notice to quit given by reason of the death of the tenant (see s 43(2); and PARA 406) (s 74(1)); or
  - 46 (3) where a person entitled to a severed part of the reversionary estate in an agricultural holding resumes possession of part of the holding by virtue of a notice to quit that part given to the tenant by virtue of the Law of Property Act 1925 s 140 (see PARA 398; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 555) (Agricultural Holdings Act 1986 s 74(3)).

As to agricultural land tribunals see PARAS 670-673.

- 5 As to the meaning of 'tenant' see PARA 323 note 5.
- 6 Agricultural Holdings Act 1986 s 74(1), (2).

7 As to arbitrations generally see PARA 469 et seq.

8 Ie except the amount of compensation under the Agricultural Holdings Act 1986 s 60(2)(b) (ie additional compensation: see PARA 448): s 74(2)(b).

9 Agricultural Holdings Act 1986 s 74(2)(b).

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#### **420. Compensation where reversion divided.**

Where the reversionary estate in an agricultural holding<sup>1</sup> has become vested in more than one person in several parts, the tenant<sup>2</sup> is entitled to require any statutory compensation<sup>3</sup> payable to him to be determined as if the holding had not been so severed<sup>4</sup>. In such cases the arbitrator<sup>5</sup> must, where necessary, apportion the amount awarded between the persons who for the purposes of the Agricultural Holdings Act 1986 constitute the landlord<sup>6</sup>, and any additional cost of the award caused by the apportionment must be directed by the arbitrator to be paid by those persons in such proportions as he determines<sup>7</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 Ie compensation payable to him under the Agricultural Holdings Act 1986.

4 Agricultural Holdings Act 1986 s 75(1).

5 As to arbitrations generally see PARA 469 et seq.

6 As to the meaning of 'landlord' see PARA 323 note 7.

7 Agricultural Holdings Act 1986 s 75(2).

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#### **421. Compensation from mortgagee.**

The statutory power<sup>1</sup> of a mortgagor in possession to create a lease of agricultural land binding on the mortgagee is exercisable in the case of mortgages of agricultural land<sup>2</sup> to which the Agricultural Holdings Act 1986 applies notwithstanding any contrary intention expressed in the mortgage deed or otherwise in writing<sup>3</sup>.

Formerly<sup>4</sup>, where the contract of tenancy was not binding on the mortgagee, a mortgagee of an agricultural holding was not personally liable to pay any sums due to the occupier of the holding by way of compensation or costs<sup>5</sup>, but such sums could be set off against rent or other sums due from the occupier in respect of the holding, and if the sum was not so set off the occupier was entitled to obtain from the Secretary of State<sup>6</sup> an order charging the holding with

the sum due<sup>7</sup>. These provisions have some continuing relevance, since it is provided that a charge on an agricultural holding created thereunder takes priority over any other charge<sup>8</sup>, however and whenever created or arising<sup>9</sup>.

1 le under the Law of Property Act 1925 s 99: see **MORTGAGE** vol 77 (2010) PARAS 346-350.

2 As to the meaning of 'agricultural land' see the Agriculture Act 1947 s 109(1); and PARA 324 (definition applied by the Law of Property Act 1925 s 99(13B) (s 99(13) amended, and s 99(13A), (13B) added, by the Agricultural Tenancies Act 1995 s 31(1)-(3))).

3 See the Law of Property Act 1925 s 99(13), (13A), (13B) (s 99(13) as amended, and s 99(13A), (13B) as added: see note 2). See also **MORTGAGE** vol 77 (2010) PARA 347. See further *Barclays Bank plc v Bean* [2004] 3 EGLR 71, [2005] BPIR 563. Note that by virtue of the Law of Property Act 1925 s 99(13), (13A), (13B) the statutory power to grant leases can be excluded if the mortgage is granted in relation to a lease which would be a farm business tenancy under the Agricultural Tenancies Act 1995 (see PARA 301 et seq).

4 le under the Agricultural Holdings Act 1948 s 74 (repealed). See the text and notes 8, 9.

5 le under the Agricultural Holdings Act 1948 s 66 (repealed). See the text and notes 8, 9.

6 As to the Secretary of State see PARA 643.

7 Agricultural Holdings Act 1948 s 74 (repealed). See the text and notes 8, 9.

8 le except a charge created or arising under the Agricultural Holdings Act 1986 s 85 (see PARAS 474-476).

9 Agricultural Holdings Act 1986 s 87(6). As between themselves, such charges rank in order of creation: s 87(6).

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#### **422. Exclusion of compensation for things done in compliance with statute.**

No compensation is payable to a tenant<sup>1</sup> under the Agricultural Holdings Act 1986, or under any custom or agreement, in respect of anything done in pursuance of an order of an arbitrator<sup>2</sup> varying the provisions of a contract of tenancy<sup>3</sup> as to the maintenance of permanent pasture<sup>4</sup>. In assessing compensation to an outgoing tenant of an agricultural holding<sup>5</sup> where land has been ploughed up in pursuance of such a direction by an arbitrator, the value per hectare of any tenant's pasture<sup>6</sup> comprised in the holding is to be taken not to exceed the average value per hectare of the whole of the tenant's pasture comprised in the holding on the termination of the tenancy<sup>7</sup>.

A tenant of an agricultural holding is not entitled to any compensation for a relevant short term improvement for which consent is not required<sup>8</sup> or, save in certain circumstances<sup>9</sup>, for any tenant right matter<sup>10</sup> if it is an improvement or matter made or effected in compliance with the tenant's obligation<sup>11</sup> to make suitable and adequate provision to return to the holding the full equivalent manurial value of all crops sold off or removed from the holding in contravention of the custom, contract or agreement or, in the case of an exercise of the right by the tenant to practise any system of cropping, to protect the holding from injury or deterioration<sup>12</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

- 2    le an order under the Agricultural Holdings Act 1986 s 14(4) (see PARA 341). As to arbitrations generally see PARA 469 et seq.
- 3    As to the meaning of 'contract of tenancy' see PARA 325.
- 4    Agricultural Holdings Act 1986 s 76(1)(a).
- 5    As to the meaning of 'agricultural holding' see PARA 323.
- 6    'Tenant's pasture' means pasture laid down at the expense of the tenant or paid for by the tenant on entering on the holding: Agricultural Holdings Act 1986 s 76(2).
- 7    Agricultural Holdings Act 1986 s 76(1)(b). As to the termination of an agricultural tenancy see PARA 328 note 1.
- 8    le short term improvements begun on or after 1 March 1948, and other matters, specified in the Agricultural Holdings Act 1986 Sch 8 Pt I (see PARA 432).
- 9    le subject to the Agricultural Holdings Act 1986 Sch 12 para 8, under which the tenant must elect for compensation on the statutory basis in accordance with Sch 8 Pt II (see PARA 433).
- 10   le a matter specified in the Agricultural Holdings Act 1986 Sch 8 Pt II (see PARA 433).
- 11   le an obligation under the Agricultural Holdings Act 1986 s 15(4) (see PARA 344).
- 12   Agricultural Holdings Act 1986 s 76(3). As to the right to dispose of produce and to practise any system of cropping see s 15; and PARA 344.

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#### **423. Compensation for milk quota.**

Compensation may be payable where on the termination of a tenancy under the Agricultural Holdings Act 1986 the tenant has milk quota registered as his in relation to a holding consisting of or including that land<sup>1</sup>.

<sup>1</sup> See the Agriculture Act 1986 s 13, Sch 1; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 739-749.

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### ***C. COMPENSATION FOR DAMAGE BY GAME***

#### **424. Tenant's rights to compensation under statute.**

Where the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> under the Agricultural Holdings Act 1986 sustains damage to his crops from any wild animals or birds the common law right to kill<sup>3</sup> and to take which is vested in the landlord<sup>4</sup> or anyone claiming under him<sup>5</sup>, being animals or birds which the tenant does not have permission in writing to kill, he is entitled to compensation from his



landlord subject to certain requirements<sup>6</sup>. Those requirements are that the tenant must give his landlord:

- 160 (1) notice in writing<sup>7</sup> within one month after the tenant first became, or ought reasonably to have become, aware of the occurrence of the damage<sup>8</sup>;
- 161 (2) a reasonable opportunity<sup>9</sup> to inspect the damage, in the case of damage to a growing crop<sup>10</sup>, before the crop is begun to be reaped, raised or consumed<sup>11</sup>, and in the case of damage to a crop which has been reaped or raised, before the crop has begun to be removed from the land<sup>12</sup>; and
- 162 (3) notice in writing of the claim, together with particulars of it, within one month after the expiry of the year<sup>13</sup> in respect of which the claim is made<sup>14</sup>.

In default of agreement made after the damage has been suffered, the amount of compensation must be determined by arbitration<sup>15</sup>. A tenant can obtain a charge on the holding for game damage compensation<sup>16</sup>.

The landlord is liable to the tenant where the right to kill and take the animals or birds which caused the damage has been granted to some other person but the landlord is entitled to an indemnity from that other person, and any dispute in respect of such indemnity must be determined by arbitration<sup>17</sup>. The landlord's liability extends beyond his own land to game from a neighbouring estate<sup>18</sup>, subject to a probable indemnity from his neighbour<sup>19</sup>. It is not possible for the landlord to contract out of his liability to the tenant<sup>20</sup>. Permission in writing to the tenant to kill any particular kind of game excludes compensation for damage caused by that species<sup>21</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 At common law the tenant has the exclusive right to the game on land in his occupation unless the right is reserved to the landlord: *Moore v Earl of Plymouth* (1817) 7 Taunt 614. Common law also gives a right to compensation, but there is no liability where damage occurs through the natural increase in game already on the land: *Farrer v Nelson* (1885) 15 QBD 258. By statute an occupier of land has the right, as an incident of his occupation, to kill hares and rabbits, and any agreement or condition which seeks to exclude the right is void: see the Ground Game Act 1880 ss 1, 3; and **ANIMALS** vol 2 (2008) PARA 772. Further, the Secretary of State and the Welsh Ministers may require any person having the right to do so to destroy or take rabbits, hares and other rodents, deer, foxes and moles, and certain unprotected wild birds, for the prevention of damage to crops, pasture, animal or human foodstuffs, livestock, trees, hedges, banks or works on land, and may also serve a notice on the occupier of any land requiring him to take steps to prevent the escape of any animals from land: see the Agriculture Act 1947 ss 98-100; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1021-1023. As to the Secretary of State and the Welsh Ministers see PARA 643.

4 As to the meaning of 'landlord' see PARA 323 note 7.

5 Ie other than the tenant himself: Agricultural Holdings Act 1986 s 20(1).

6 Agricultural Holdings Act 1986 s 20(1).

7 As to the service of notices see PARA 328 note 4.

8 Agricultural Holdings Act 1986 s 20(2)(a).

9 As to what constitutes reasonable opportunity see *Dale v Hatfield Chase Corpn* [1922] 2 KB 282, CA; *Barbour v M'Douall* 1914 SC 844, Ct of Sess.

10 Seed once sown is treated as a growing crop whether or not it has germinated: Agricultural Holdings Act 1986 s 20(3)(a).

11 Agricultural Holdings Act 1986 s 20(2)(b)(i).

12 Agricultural Holdings Act 1986 s 20(2)(b)(ii).

13 'Year' means any period of 12 months ending, in any year, with 29 September or with such other date as may by agreement between the landlord and tenant be substituted for that date: Agricultural Holdings Act 1986 s 20(3)(b).

14 Agricultural Holdings Act 1986 s 20(3)(c).

15 Agricultural Holdings Act 1986 s 20(4).

16 See the Agricultural Holdings Act 1986 s 85(2); and PARA 475.

17 Agricultural Holdings Act 1986 s 20(5).

18 *Thomson v Earl of Galloway* 1919 SC 611, Ct of Sess.

19 *Farrer v Nelson* (1885) 15 QBD 258.

20 See the Agricultural Holdings Act 1986 s 78(1); and PARA 415.

21 *Ross v Watson* 1943 SC 406, Ct of Sess.

## UPDATE

### 424 Tenant's rights to compensation under statute

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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## D. COMPENSATION FOR OLD IMPROVEMENTS

### 425. Right to compensation for old improvements.

A tenant<sup>1</sup> under the Agricultural Holdings Act 1986 has a statutory right<sup>2</sup> on the termination of his tenancy<sup>3</sup> and upon quitting the holding<sup>4</sup> to obtain from his landlord<sup>5</sup> compensation for specified improvements<sup>6</sup> carried out on the holding and begun before 1 March 1948<sup>7</sup>. Such improvements are termed 'old improvements'<sup>8</sup>.

The tenant does not have a right to compensation in respect of old improvements where the contract of tenancy<sup>9</sup> was made before 1 January 1921<sup>10</sup> and the improvement was one which he was required to carry out by the terms of his tenancy<sup>11</sup>. Further, the old improvement must have been one made on land which, at the time when the improvement was begun, was either a holding within the meaning of the Agricultural Holdings Act 1923 as originally enacted<sup>12</sup>, or fell to be treated as such<sup>13</sup>.

In lieu of statutory compensation, a tenant may claim compensation under custom, agreement or otherwise, if he is so entitled<sup>14</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 This right is subject to the conditions described in PARA 428 et seq.

- 3 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 4 As to the meaning of 'agricultural holding' see PARA 323.
- 5 As to the meaning of 'landlord' see PARA 323 note 7.
- 6 As specified in the Agricultural Holdings Act 1986 Sch 9. As to those improvements see PARA 426.
- 7 Agricultural Holdings Act 1986 Sch 9 Pt I para 1(1). See also Sch 12 para 5. The date mentioned in the text is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 8 Agricultural Holdings Act 1986 Sch 9 Pt I para 1(2). It should be noted that some of the items formerly contained in the Agricultural Holdings Act 1948 Sch 2 (repealed) are no longer included (eg protecting young fruit trees).
- 9 As to the meaning of 'contract of tenancy' see PARA 325.
- 10 As to the date on which the Agriculture Act 1920, from which these provisions in part derive, was brought into force: see s 36(1) (repealed).
- 11 Agricultural Holdings Act 1986 Sch 9 Pt I para 1(3); and see *Huckell v Saintey* [1923] 1 KB 150, CA.
- 12 A 'holding' for the purposes of the Agricultural Holdings Act 1923 as originally enacted was any parcel of land held by a tenant which was either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and was let or agreed to be let for a term of years, or for lives, or for lives and years, or from year to year, and not let to a tenant during his continuance in any office, appointment, or employment held under the landlord, but it did not include any allotment garden or any land cultivated as a garden unless it was cultivated wholly or mainly for the purposes of the trade or business of market gardening: Agricultural Holdings Act 1923 s 57(1) (repealed). In *Re Lancaster and Macnamara* [1918] 2 KB 472, CA, the demise of a farm with an inn was held not to constitute an agricultural holding. In *Howatson v M'Clymont* 1914 51 Sc LR 153, parkland without buildings tenanted by a dairy keeper was used solely for grazing purposes and was held to be an agricultural holding. In *Re Russell and Harding* (1922) 128 LT 476, CA, the land remained an agricultural holding although the farmhouse had been sub-let as a boarding house. In *Re Joel's Lease, Berwick v Baird* [1930] 2 Ch 359, a stud farm for breeding racehorses was held not to be an agricultural holding. A letting for successive periods of 364 days was not within the definition: see *Land Settlement Association Ltd v Carr* [1944] KB 657, [1944] 2 All ER 126, CA.
- 13 Agricultural Holdings Act 1986 Sch 9 Pt I para 1(5). 'Fell to be treated as such' means treated as such by virtue of the Agricultural Holdings Act 1923 s 33 (repealed), which provided that where land comprised in a contract of tenancy was not a holding within the meaning of the Act by reason only of the fact that the land so comprised included land (called 'non-statutory land'), which, owing to the nature of the buildings thereon or the use to which it was put, would not, if it had been separately let, be a holding within the meaning of the Act, the provisions of the Act relating to compensation for improvements and disturbance should, unless otherwise agreed in writing, apply to the part of the land exclusive of the non-statutory land as if that part were a separate holding. This did not apply to contracts of tenancy made before 1 January 1921.
- 14 Agricultural Holdings Act 1986 Sch 9 Pt I para 1(4).

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#### **426. The nature of old improvements.**

The old improvements<sup>1</sup> for which compensation is payable are:

- 163 (1) erection, alteration or enlargement of buildings<sup>2</sup>;
- 164 (2) formation of silos<sup>3</sup>;
- 165 (3) making and planting of osier beds<sup>4</sup>;

- 166 (4) making of water meadows or works of irrigation<sup>5</sup>;
- 167 (5) making of gardens<sup>6</sup>;
- 168 (6) making or improvement of roads or bridges<sup>7</sup>;
- 169 (7) making or improvement of watercourses, ponds, wells or reservoirs or of works for the application of water power or for the supply of water for agricultural<sup>8</sup> or domestic purposes<sup>9</sup>;
- 170 (8) making or removal of permanent fences<sup>10</sup>;
- 171 (9) planting of hops<sup>11</sup>;
- 172 (10) planting of orchards or fruit bushes<sup>12</sup>;
- 173 (11) reclaiming of waste land<sup>13</sup>;
- 174 (12) warping or weiring of land<sup>14</sup>;
- 175 (13) embankments and sluices against floods<sup>15</sup>;
- 176 (14) erection of wirework in hop gardens<sup>16</sup>;
- 177 (15) provision of permanent sheep-dipping accommodation<sup>17</sup>; and
- 178 (16) drainage<sup>18</sup>.

Until the Agricultural Holdings Act 1984 was enacted<sup>19</sup>, there was a category of improvements for which no notice or consent was required for a claim for compensation<sup>20</sup>.

1 As to the meaning of 'old improvements' see PARA 425.

2 Agricultural Holdings Act 1986 Sch 9 Pt II para 1. As to the meaning of 'building' see PARA 332 note 6.

3 Agricultural Holdings Act 1986 Sch 9 Pt II para 2.

4 Agricultural Holdings Act 1986 Sch 9 Pt II para 3.

5 Agricultural Holdings Act 1986 Sch 9 Pt II para 4.

6 Agricultural Holdings Act 1986 Sch 9 Pt II para 5.

7 Agricultural Holdings Act 1986 Sch 9 Pt II para 6.

8 As to the meaning of 'agricultural' see PARA 324.

9 Agricultural Holdings Act 1986 Sch 9 Pt II para 7.

10 Agricultural Holdings Act 1986 Sch 9 Pt II para 8.

11 Agricultural Holdings Act 1986 Sch 9 Pt II para 9.

12 Agricultural Holdings Act 1986 Sch 9 Pt II para 10.

13 Agricultural Holdings Act 1986 Sch 9 Pt II para 11.

14 Agricultural Holdings Act 1986 Sch 9 Pt II para 12.

15 Agricultural Holdings Act 1986 Sch 9 Pt II para 13.

16 Agricultural Holdings Act 1986 Sch 9 Pt II para 14.

17 Agricultural Holdings Act 1986 Sch 9 Pt II para 15.

18 Agricultural Holdings Act 1986 Sch 9 Pt II para 16.

19 The Agricultural Holdings Act 1984 received Royal Assent on 12 July 1984 and came into force on 12 September 1984 (s 11(2) (repealed)).

20 The improvements specified in the Agricultural Holdings Act 1948 Sch 2 Pt III (repealed). These improvements were chalking of land; clay-burning; claying of land or spreading blaes upon the land; liming of land; marling of land; application to land of purchased artificial or other purchased manure; consumption on the holding by cattle, sheep, pigs or by horses other than those regularly employed on the holding of corn, cake, or

other feeding-stuff not produced on the holding; consumption in the same manner of corn proved to have been produced and consumed on the holding; laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the termination of the tenancy, in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation; repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant was himself under an obligation to execute. This provision was repealed as spent by the Agricultural Holdings Act 1984 Sch 3 para 27(a).

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#### **427. Amount of compensation for old improvements.**

The measure of statutory compensation for old improvements<sup>1</sup> is an amount equal to the increase attributable to the improvement in the value of the agricultural holding<sup>2</sup> having regard to the holding's character and situation and the average requirements of tenants reasonably skilled in husbandry<sup>3</sup>.

In ascertaining the amount of statutory compensation to be paid to a tenant<sup>4</sup> in respect of old improvements, any benefit which the landlord<sup>5</sup> has given or allowed to the tenant in consideration of the tenant's executing the improvement, whether expressly stated in the contract of tenancy<sup>6</sup> to be so given or allowed or not, is to be taken into account<sup>7</sup>.

- 1 As to the meaning of 'old improvements' see PARA 425. As to the nature of old improvements see PARA 426.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 Agricultural Holdings Act 1986 Sch 9 Pt I para 2(1).
- 4 As to the meaning of 'tenant' see PARA 323 note 5.
- 5 As to the meaning of 'landlord' see PARA 323 note 7.
- 6 As to the meaning of 'contract of tenancy' see PARA 325.
- 7 Agricultural Holdings Act 1986 Sch 9 Pt I para 2(2).

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#### **428. Consent to permanent old improvements.**

Compensation is not payable for a specified old improvement<sup>1</sup>, unless before the execution of the improvement the landlord<sup>2</sup> consented in writing<sup>3</sup> to the making of the improvement<sup>4</sup>. Such consent could be unconditional, or upon such terms as to compensation or otherwise as was agreed<sup>5</sup>. Where the consent was given upon agreed terms as to compensation, compensation payable under the agreement is substituted for compensation payable under the Agricultural Holdings Act 1986<sup>6</sup>.

- 1    le an improvement specified by the Agricultural Holdings Act 1986 Sch 9 Pt II. As to the meaning of 'old improvements' see PARA 425. As to the nature of old improvements see PARA 426.
- 2    As to the meaning of 'landlord' see PARA 323 note 7.
- 3    The consent may be given in the lease. A lease providing that the tenant may at his own cost convert meadow into orchard is such a consent (*Mears v Callender* [1901] 2 Ch 388) but not the mere recognition in a lease of the tenant's right to plant fruit trees (*Re Morse and Dixon* (1917) 87 LJB 1, CA).
- 4    Agricultural Holdings Act 1986 Sch 9 Pt I para 3(1).
- 5    Agricultural Holdings Act 1986 Sch 9 Pt I para 3(1). As to whether the landlord can impose a condition that no compensation is to be payable see *Mears v Callender* [1901] 2 Ch 388; cf *Turnbull v Millar* 1942 SC 521, Ct of Sess. See also the comments of Lord Hailsham of St Marylebone LC in *Johnson v Moreton* [1980] AC 37 at 58, [1978] 3 All ER 37 at 47-48, HL.
- 6    Agricultural Holdings Act 1986 Sch 9 Pt I para 3(2).

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#### **429. Compensation for drainage as old improvement.**

Compensation is payable for drainage<sup>1</sup> provided the tenant<sup>2</sup> had, not more than three nor less than two months before beginning the work, given notice<sup>3</sup> of his intention to execute the improvement and of the manner in which he proposed to execute it<sup>4</sup>. The landlord<sup>5</sup> and tenant must have agreed upon the terms on which the improvement was to be executed<sup>6</sup>. In a case where no agreement was reached, and the tenant did not withdraw the notice, the landlord must have failed to exercise within a reasonable time the right conferred on him<sup>7</sup> to do it himself<sup>8</sup>. These provisions, requiring notice to be given as a prerequisite to entitlement to compensation, have no application if the parties agree by the contract of tenancy<sup>9</sup> or otherwise to dispense with notice<sup>10</sup>. An agreement to dispense with notice need not be in writing<sup>11</sup>. If the parties agreed, whether after notice was given or by agreement to dispense with notice, upon terms as to compensation upon which the improvement was to be executed, compensation payable under the agreement is substituted for the compensation under the Agricultural Holdings Act 1986<sup>12</sup>.

- 1    Drainage is item 16 in the Agricultural Holdings Act 1986 Sch 9 Pt II (see PARA 426).
- 2    As to the meaning of 'tenant' see PARA 323 note 5.
- 3    As to the service of notices see PARA 328 note 4.
- 4    Agricultural Holdings Act 1986 Sch 9 Pt I para 4(1).
- 5    As to the meaning of 'landlord' see PARA 323 note 7.
- 6    Agricultural Holdings Act 1986 Sch 9 Pt I para 4(1)(a).
- 7    le by the Agricultural Holdings Act 1923 s 3 (repealed).
- 8    Agricultural Holdings Act 1986 Sch 9 Pt I para 4(1)(b).
- 9    As to the meaning of 'contract of tenancy' see PARA 325.
- 10   Agricultural Holdings Act 1986 Sch 9 Pt I para 4(2).

- 11 *Hamilton Ogilvy v Elliot* (1904) 7 F 1115.
- 12 Agricultural Holdings Act 1986 Sch 9 Pt I para 4(3).

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#### **430. Change of tenancy or tenant where old improvements claimed.**

A tenant<sup>1</sup> who has remained in his agricultural holding<sup>2</sup>, or in any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, during two or more tenancies is not deprived of his right to compensation for old improvements<sup>3</sup> by reason only that the improvements were not made during the tenancy at the termination<sup>4</sup> of which he quits the holding<sup>5</sup>.

Where, on entering into occupation of an agricultural holding, the tenant, with the consent in writing of his landlord<sup>6</sup>, paid to an outgoing tenant any statutory compensation<sup>7</sup> in respect of the whole or part of an improvement, he is entitled, on quitting the holding, to claim compensation for the improvement or part in the same manner, if at all, as the outgoing tenant would have been entitled if the outgoing tenant had remained tenant of the holding and quitted it at the time at which the tenant quits it<sup>8</sup>.

If the incoming tenant agrees to pay on entry such sum as is found to be due as compensation from the landlord, the liability to pay arises at and the period of limitation runs from the date at which the amount due has been ascertained<sup>9</sup>. An agreement between the incoming tenant and the outgoing tenant relating to compensation for old improvements does not affect the landlord's rights if he is not a party to the agreement<sup>10</sup>. An agreement between the landlord and the outgoing tenant that the landlord will only seek compensation against the incoming tenant for old improvements will be void<sup>11</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'old improvements' see PARA 425. As to the nature of old improvements see PARA 426.

4 As to the termination of an agricultural tenancy see PARA 328 note 1.

5 Agricultural Holdings Act 1986 Sch 9 Pt I para 5(1) (Sch 9 Pt I para 5(1) amended, and Sch 9 Pt I para 5(1A) added, by SI 2006/2805). Where the Agricultural Holdings Act 1986 applies in relation to a tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 301, 321), the reference in the Agricultural Holdings Act 1986 Sch 9 Pt I para 5(1) to a 'substantial part of the land comprised in the holding' means a substantial part determined by reference to either area or value: Sch 9 Pt I para 5(1A) (as so added).

The amendments made by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, do not apply in relation to compensation payable on the termination of a tenancy where that tenancy was granted before 19 October 2006 (ie the date on which art 6 was brought into force: see art 1(1)(b)): see art 6(8).

6 As to the meaning of 'landlord' see PARA 323 note 7.

7 Ie compensation for old improvements payable under the Agricultural Holdings Act 1986 Sch 9, or under the Agricultural Holdings Act 1923 or the Agricultural Holdings Act 1948 (both of which are now repealed).

8 Agricultural Holdings Act 1986 Sch 9 Pt I para 5(2).

9 *Cheshire County Council v Hopley* (1923) 130 LT 123.

10 *Petrie v Daniel* (1804) 1 Smith KB 199.

11 This is by virtue of the Agricultural Holdings Act 1986 s 78 (see PARA 415). Cf *Greenshields v Roger* 1922 SC 140, HL.

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## ***E. COMPENSATION FOR RELEVANT IMPROVEMENTS AND TENANT RIGHT***

### **(A) ENTITLEMENT**

#### **431. Right to compensation.**

A tenant<sup>1</sup> of an agricultural holding<sup>2</sup> is entitled, subject to certain exceptions<sup>3</sup>, on quitting the holding on the termination of the tenancy<sup>4</sup>, to obtain from his landlord<sup>5</sup> compensation for relevant improvements carried out by the tenant and for tenant right matters<sup>6</sup>. Relevant improvements are those specified in the Agricultural Holdings Act 1986<sup>7</sup> and begun on or after 1 March 1948<sup>8</sup>. It is immaterial with regard to the tenant's right to compensation for relevant improvements that he entered into occupation before 1 March 1948: the test is whether the improvements were commenced on or after that date<sup>9</sup>.

The Secretary of State and the Welsh Ministers<sup>10</sup> have power to vary by order the provisions which specify relevant improvements and tenant right matters<sup>11</sup> after consultation with such bodies as appear to them to represent the interests of landlords and tenants of agricultural holdings<sup>12</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 See PARAS 443-446.

4 As to the termination of an agricultural tenancy see PARA 328 note 1.

5 As to the meaning of 'landlord' see PARA 323 note 7.

6 Agricultural Holdings Act 1986 ss 64(1), (2), 65(1). As to the nature of statutory tenant right see PARA 433; and as to the tenant's right to elect for statutory compensation see PARA 435.

7 Ie in the Agricultural Holdings Act 1986 Sch 7 or Sch 8 Pt I (see PARA 432).

8 Agricultural Holdings Act 1986 s 64(1), (2). As to the nature of 'relevant improvements' see PARA 432. The date mentioned in the text is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

9 Agricultural Holdings Act 1986 s 64(3).

10 As to the Secretary of State and the Welsh Ministers see PARA 643.

11 Ie the provisions of the Agricultural Holdings Act 1986 Schs 7, 8.



12 Agricultural Holdings Act 1986 s 91(1). Such an order may make such provision as to the operation of the Agricultural Holdings Act 1986 in relation to tenancies current when the order takes effect as appears to the Secretary of State or the Welsh Ministers to be just having regard to the variation of the Schedules affected by the order: s 91(2). The power to vary extends beyond Schs 7, 8 to Sch 10 (market garden improvements): see PARA 464 et seq. As to the making of orders generally see PARA 332 note 5.

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### 432. The nature of relevant improvements.

Relevant improvements for which compensation is payable<sup>1</sup> are either long term improvements<sup>2</sup> or short term improvements for which no consent is required<sup>3</sup> carried out on the holding by the tenant on or after 1 March 1948<sup>4</sup>.

Long term improvements are divided into two categories, namely improvements to which the consent of the landlord is required<sup>5</sup> and improvements to which the consent of the landlord or the approval of the agricultural land tribunal<sup>6</sup> is required<sup>7</sup>.

The improvements to which the consent of the landlord is required are:

- 179 (1) making or planting of osier beds<sup>8</sup>;
- 180 (2) making of water meadows<sup>9</sup>;
- 181 (3) making of watercress beds<sup>10</sup>;
- 182 (4) planting of hops<sup>11</sup>;
- 183 (5) planting of orchards or fruit bushes<sup>12</sup>;
- 184 (6) warping or weiring of land<sup>13</sup>;
- 185 (7) making of gardens<sup>14</sup>; and
- 186 (8) provision of underground tanks<sup>15</sup>.

The improvements to which the consent of the landlord or the approval of the agricultural land tribunal is required are:

- 187 (a) erection, alteration or enlargement of buildings<sup>16</sup>, and making or improvement of permanent yards<sup>17</sup>;
- 188 (b) carrying out works in compliance with an improvement notice served, or an undertaking accepted, under certain housing legislation<sup>18</sup>;
- 189 (c) erection or construction of loading platforms, ramps, hard standings for vehicles or other similar facilities<sup>19</sup>;
- 190 (d) construction of silos<sup>20</sup>;
- 191 (e) claying of land<sup>21</sup>;
- 192 (f) marling of land<sup>22</sup>;
- 193 (g) making or improvement of roads or bridges<sup>23</sup>;
- 194 (h) making or improvement of water courses, culverts, ponds, wells or reservoirs, or of works for the application of water power for agricultural<sup>24</sup> or domestic purposes or of works for the supply, distribution or use of water for such purposes (including the erection or installation of any structure or equipment which forms part of or is to be used for or in connection with operating any such works)<sup>25</sup>;
- 195 (i) making or removal of permanent fences<sup>26</sup>;
- 196 (j) reclaiming of waste land<sup>27</sup>;
- 197 (k) making or improvement of embankments or sluices<sup>28</sup>;

- 198 (l) erection of wirework for hop gardens<sup>29</sup>;
- 199 (m) provision of permanent sheep-dipping accommodation<sup>30</sup>;
- 200 (n) removal of bracken, gorse, tree roots, boulders or other like obstructions to cultivation<sup>31</sup>;
- 201 (o) land drainage (other than improvements relating to mole drainage)<sup>32</sup>;
- 202 (p) provision or laying-on of electric light or power<sup>33</sup>;
- 203 (q) provision of facilities for the storage or disposal of sewage or farm waste<sup>34</sup>;
- 204 (r) repairs to fixed equipment<sup>35</sup>, being equipment reasonably required for the proper farming of the holding<sup>36</sup>, other than repairs which the tenant is under an obligation to carry out<sup>37</sup>;
- 205 (s) the grubbing up of orchards or fruit bushes<sup>38</sup>; and
- 206 (t) planting trees otherwise than as an orchard and bushes other than fruit bushes<sup>39</sup>.

Short term improvements (to which no consent is required) begun on or after 1 March 1948 for which compensation is payable are:

- 207 (i) mole drainage and works carried out to secure its efficient functioning<sup>40</sup>;
- 208 (ii) protection of fruit trees against animals<sup>41</sup>;
- 209 (iii) clay burning<sup>42</sup>;
- 210 (iv) liming (including chalking) of land<sup>43</sup>;
- 211 (v) application to land of purchased manure and fertiliser, whether organic or inorganic<sup>44</sup>; and
- 212 (vi) consumption on the holding of corn (whether produced on the holding or not), or of cake or other feeding stuff not produced on the holding, by horses, cattle, sheep, pigs or poultry<sup>45</sup>.

1 As to the right to compensation, and as to the meaning of 'relevant improvement', see PARA 431.

2 le those specified by the Agricultural Holdings Act 1986 Sch 7 (see heads (1)-(8), (a)-(t) in the text).

3 le those specified by the Agricultural Holdings Act 1986 Sch 8 paras 1-6 (see heads (i)-(vi) in the text).

4 Agricultural Holdings Act 1986 s 64(1), (2). As to the meaning of 'tenant' see PARA 323 note 5. The date mentioned in the text is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

5 See heads (1)-(8) in the text. As to the meaning of 'landlord' see PARA 323 note 7.

6 As to agricultural land tribunals see PARAS 670-673.

7 See heads (a)-(t) in the text.

8 Agricultural Holdings Act 1986 Sch 7 para 1.

9 Agricultural Holdings Act 1986 Sch 7 para 2.

10 Agricultural Holdings Act 1986 Sch 7 para 3.

11 Agricultural Holdings Act 1986 Sch 7 para 4.

12 Agricultural Holdings Act 1986 Sch 7 para 5.

13 Agricultural Holdings Act 1986 Sch 7 para 6.

14 Agricultural Holdings Act 1986 Sch 7 para 7.

15 Agricultural Holdings Act 1986 Sch 7 para 8.

- 16 As to the meaning of 'building' see PARA 332 note 6.
- 17 Agricultural Holdings Act 1986 Sch 7 para 9.
- 18 Agricultural Holdings Act 1986 Sch 7 para 10. The housing legislation referred to in the text is the Housing Act 1985 Pt VII (repealed) or the Housing Act 1974 Pt VIII (repealed).
- 19 Agricultural Holdings Act 1986 Sch 7 para 11.
- 20 Agricultural Holdings Act 1986 Sch 7 para 12.
- 21 Agricultural Holdings Act 1986 Sch 7 para 13.
- 22 Agricultural Holdings Act 1986 Sch 7 para 14.
- 23 Agricultural Holdings Act 1986 Sch 7 para 15.
- 24 As to the meaning of 'agricultural' see para 324.
- 25 Agricultural Holdings Act 1986 Sch 7 para 16.
- 26 Agricultural Holdings Act 1986 Sch 7 para 17.
- 27 Agricultural Holdings Act 1986 Sch 7 para 18.
- 28 Agricultural Holdings Act 1986 Sch 7 para 19.
- 29 Agricultural Holdings Act 1986 Sch 7 para 20.
- 30 Agricultural Holdings Act 1986 Sch 7 para 21.
- 31 Agricultural Holdings Act 1986 Sch 7 para 22.
- 32 Agricultural Holdings Act 1986 Sch 7 para 23. Improvements relating to mole drainage are those falling within Sch 8 para 1 (see head (i) in the text).
- 33 Agricultural Holdings Act 1986 Sch 7 para 24.
- 34 Agricultural Holdings Act 1986 Sch 7 para 25.
- 35 As to the meaning of 'fixed equipment' see PARA 332 note 6.
- 36 As to the 'farming' of land see PARA 324.
- 37 Agricultural Holdings Act 1986 Sch 7 para 26.
- 38 Agricultural Holdings Act 1986 Sch 7 para 27.
- 39 Agricultural Holdings Act 1986 Sch 7 para 28.
- 40 Agricultural Holdings Act 1986 Sch 8 para 1.
- 41 Agricultural Holdings Act 1986 Sch 8 para 2.
- 42 Agricultural Holdings Act 1986 Sch 8 para 3.
- 43 Agricultural Holdings Act 1986 Sch 8 para 4.
- 44 Agricultural Holdings Act 1986 Sch 8 para 5.
- 45 Agricultural Holdings Act 1986 Sch 8 para 6.

AGRICULTURAL HOLDINGS ACT 1986/(vii) Compensation/E. COMPENSATION FOR RELEVANT IMPROVEMENTS AND TENANT RIGHT/(A) Entitlement/433. The nature of statutory tenant right.

### **433. The nature of statutory tenant right.**

Statutory tenant right matters are:

- 213 (1) growing crops and severed or harvested crops and produce, being in either case crops or produce grown on the holding in the last year of tenancy, but not including crops or produce which the tenant<sup>1</sup> has a right to sell or remove from the holding<sup>2</sup>;
- 214 (2) seeds sown and cultivations, fallows and acts of husbandry performed on the holding at the expense of the tenant (including the growing of herbage crops for commercial seed production)<sup>3</sup>;
- 215 (3) pasture laid down with clover, grass, lucerne, sainfoin or other seeds, being either pasture laid down at the expense of the tenant otherwise than in compliance with an obligation imposed on him by an agreement in writing to lay it down to replace temporary pasture comprised in the holding when the tenant entered on the holding which was not paid for by him<sup>4</sup> or pasture paid for by the tenant on entering on the holding<sup>5</sup>;
- 216 (4) acclimatisation, hefting or settlement of hill sheep<sup>6</sup> on hill land<sup>7</sup>; and
- 217 (5) in areas of the country where arable crops can be grown<sup>8</sup> in an unbroken series of not less than six years and it is reasonable that they should be grown on the holding or part of it, the residual fertility value of the sod of the excess qualifying leys<sup>9</sup> on the holding, if any<sup>10</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 Agricultural Holdings Act 1986 Sch 8 para 7.

3 Agricultural Holdings Act 1986 Sch 8 para 8.

4 Agricultural Holdings Act 1986 Sch 8 para 9(a).

5 Agricultural Holdings Act 1986 Sch 8 para 9(b).

6 'Hill sheep' means sheep which:

47 (1) have been reared and managed on a particular hill or mountain (Agricultural Holdings Act 1986 Sch 8 para 10(2)(a));

48 (2) have developed an instinct not to stray from the hill or mountain (Sch 8 para 10(2)(b));

49 (3) are able to withstand the climatic conditions typical of the hill or mountain (Sch 8 para 10(2)(c)); and

50 (4) have developed resistance to diseases which are likely to occur in the area in which the hill or mountain is situated (Sch 8 para 10(2)(d)).

7 Agricultural Holdings Act 1986 Sch 8 para 10(1). 'Hill land' means any hill or mountain where only hill sheep are likely to thrive throughout the year: Sch 8 para 10(2).

8 For these purposes:

51 (1) the growing of an arable crop includes the growing of clover, grass, lucerne, sainfoin or other seeds grown for a period of less than one year but does not include the laying down of a ley continuously maintained as such for more than one year (Agricultural Holdings Act 1986 Sch 8 para 11(2)(a));

- 52 (2) the qualifying leys comprising the excess qualifying leys are those indicated to be such by the tenant (Sch 8 para 11(2)(b)); and
- 53 (3) qualifying leys laid down at the expense of the landlord without reimbursement by the tenant or any previous tenant of the holding or laid down by and at the expense of the tenant pursuant to agreement by him with the landlord for the establishment of a specified area of leys on the holding as a condition of the landlord giving consent to the ploughing or other destruction of permanent pasture or pursuant to a direction given by an arbitrator on a reference under s 14(2) (see PARA 341), are not included in the excess qualifying leys (Sch 8 para 11(2)(c)).

As to the meaning of 'landlord' see PARA 323 note 7. As to leys see note 9.

9 'Leys' means land laid down with clover, grass, lucerne, sainfoin or other seeds, but does not include permanent pasture; 'qualifying leys' means leys continuously maintained as such for a period of three or more growing seasons since being laid down, and arable land which within the three growing seasons immediately preceding the termination of the tenancy was ley continuously maintained before being destroyed by ploughing or some other means for the production of a tillage crop or crops; 'excess qualifying leys' means the area of qualifying leys on the holding at the termination of the tenancy which is equal to the area (if any) by which one-third of the aggregate of the areas of leys on the holding at the termination of the tenancy, on the date one year prior to such termination, and on the date two years prior to such termination, exceeds the accepted proportion at the termination of the tenancy; and 'accepted proportion' means the area which represents the proportion which the total area of the leys on the holding would, taking into account the capability of the holding, be expected to bear to the area of the holding, excluding the permanent pasture on the holding, or, if a greater proportion is provided for by or under the terms of the tenancy, that proportion: Agricultural Holdings Act 1986 Sch 8 para 11(3). As to the termination of an agricultural tenancy see PARA 328 note 1.

10 Agricultural Holdings Act 1986 Sch 8 para 11(1).

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#### **434. Change of tenancy or tenant where relevant improvements claimed.**

Where the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> has remained in the holding, or in any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, during two or more tenancies, he must not be deprived of his right to compensation under the Agricultural Holdings Act 1986 in respect of relevant improvements<sup>3</sup> by reason only that the improvements were made during a tenancy other than the one at the termination of which<sup>4</sup> he quits the holding<sup>5</sup>.

Where, on entering into occupation of an agricultural holding, the tenant with the consent in writing of his landlord<sup>6</sup> paid to an outgoing tenant any compensation payable by the landlord<sup>7</sup> in respect of the whole or part of a relevant improvement<sup>8</sup>, or has paid to the landlord himself the amount of any such compensation payable to an outgoing tenant<sup>9</sup>, he is entitled, on quitting the holding, to claim compensation in respect thereof in the same manner, if at all<sup>10</sup>, as the outgoing tenant would have been entitled if the outgoing tenant had remained tenant of the holding and quitted it at the same time as the tenant himself quits it<sup>11</sup>. In cases not falling within the above provision, a tenant who, on entering into occupation of the holding, paid to his landlord any amount in respect of the whole or part of a relevant improvement is entitled on quitting the holding, subject to any written agreement between himself and the landlord, to claim compensation in respect thereof in the same manner, if at all, as he would have been entitled if he had been the tenant of the holding at the time when the improvement was carried out and the improvement or part had been carried out by him<sup>12</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the right to compensation, and as to the meaning of 'relevant improvement', see PARA 431.

4 As to the termination of an agricultural tenancy see PARA 328 note 1.

5 Agricultural Holdings Act 1986 s 69(1) (s 69(1) amended, and s 69(1A) added, by SI 2006/2805). Where the Agricultural Holdings Act 1986 applies in relation to a tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 127, 148), the reference in the Agricultural Holdings Act 1986 s 69(1) to a 'substantial part of the land comprised in the holding' means a substantial part determined by reference to either area or value: s 69(1A) (as so added).

The amendments made by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, do not apply in relation to compensation payable on termination of a tenancy where that tenancy was granted before 19 October 2006 (ie the date on which art 6 was brought into force: see art 1(1)(b)): see art 6(8).

6 As to the meaning of 'landlord' see PARA 323 note 7. The consent may be contained in the contract of tenancy. An alleged custom that the outgoing tenant should seek payment from the incoming tenant rather than the landlord for compensation has been held bad: see *Bradburn v Foley* (1878) 3 CPD 129.

7 Ie under the Agricultural Holdings Act 1986, or under the Agricultural Holdings Act 1948 or the Agriculture Act 1947 Pt III (ss 22-46) (repealed).

8 Agricultural Holdings Act 1986 s 69(2)(a).

9 Agricultural Holdings Act 1986 s 69(2)(b).

10 The tenant only has rights commensurate with those of his predecessor. As to the enforcement of an agreement by the incoming tenant to pay compensation to the outgoing tenant see *Cheshire County Council v Hopley* (1923) 130 LT 123.

11 Agricultural Holdings Act 1986 s 69(2).

12 Agricultural Holdings Act 1986 s 69(3).

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#### **435. Election on tenant right matters where entry prior to 1 March 1948.**

Where the tenant<sup>1</sup> entered into occupation of the agricultural holding<sup>2</sup> before 1 March 1948<sup>3</sup> he is not entitled to statutory compensation in respect of the tenant right matters<sup>4</sup> unless, before the termination of the tenancy<sup>5</sup>, he gives written notice<sup>6</sup> to the landlord<sup>7</sup> stating that he elects that the statutory compensation provision<sup>8</sup> is to apply to him in respect of those matters<sup>9</sup>. Otherwise compensation will be payable under the custom of the district and the provisions (if any) of the tenancy agreement<sup>10</sup>.

Where the tenancy terminates by reason of a notice to quit and during the currency of the notice the landlord gives notice in writing requiring the tenant so to elect, the tenant cannot do so later than one month from receiving the landlord's notice<sup>11</sup> or one month from the termination of any proceedings<sup>12</sup> on which the operation of the notice to quit depends<sup>13</sup>.

Special rules apply in respect of acclimatising, hefting or settlement of hill sheep on hill land<sup>14</sup>. A tenant who entered into occupation before 1 March 1948 and who has already elected prior to 31 December 1951<sup>15</sup> that statutory compensation should apply must make another specific election in regard to acclimatisation; and a tenant who entered into occupation on or after 1

March 1948, but before 31 December 1951, must make the same specific election<sup>16</sup>. However, any tenant who has entered into occupation on or after 31 December 1951 enjoys an automatic right to the statutory basis of compensation<sup>17</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 Ie the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 4 See PARA 433.
- 5 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 6 As to the service of notices see PARA 328 note 4.
- 7 As to the meaning of 'landlord' see PARA 323 note 7.
- 8 Ie the Agricultural Holdings Act 1986 s 65(1) (see PARA 431).
- 9 Agricultural Holdings Act 1986 Sch 12 para 6(1).
- 10 It is provided that as a general rule no claim can be made for compensation for improvements or tenant right matters under custom; but tenant right claims in the case of tenants who went into occupation before 1 March 1948 are an exception to this rule: see the Agricultural Holdings Act 1986 Sch 12 para 8(1)(b).
- 11 Agricultural Holdings Act 1986 Sch 12 para 6(2)(a).
- 12 Ie under the Agricultural Holdings Act 1986 ss 26, 27 (including any proceedings under Sch 3). See PARAS 374-375.
- 13 Agricultural Holdings Act 1986 Sch 12 para 6(2)(b).
- 14 See the Agricultural Holdings Act 1986 Sch 8 para 10; and PARA 433.
- 15 Ie the date on which the Agricultural Holdings Act (Variation of Fourth Schedule) Order 1951, SI 1951/2168 (revoked) came into operation.
- 16 Agricultural Holdings Act 1986 Sch 12 para 7.
- 17 Agricultural Holdings Act 1986 Sch 12 para 7.

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## (B) CONSENTS

### **436. Long term improvements begun on or after 1 March 1948.**

Generally, a tenant<sup>1</sup> under the Agricultural Holdings Act 1986 is not entitled to compensation for long term improvements<sup>2</sup> unless the landlord<sup>3</sup> consented to them in writing<sup>4</sup>. Such consent may be given unconditionally or on such terms as to compensation or otherwise as may be agreed in writing between the parties<sup>5</sup>. If an agreement as to compensation is made, the measure of compensation laid down has effect subject to the provisions of that agreement<sup>6</sup>.

Where the tenant of a holding has carried out a long term improvement<sup>7</sup> in accordance with the provision of a hill farming land improvement scheme<sup>8</sup> for the making of the improvement and for the tenant's being responsible for doing the work, being a provision included at the instance or with the consent of the landlord, the landlord is deemed to have consented thereto for the purposes of the compensation provisions<sup>9</sup>, and any agreement between the landlord and tenant as to compensation or otherwise in relation to the improvement has effect as an agreement mentioned in those provisions<sup>10</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to long term improvements see the Agricultural Holdings Act 1986 Sch 7; and PARA 432.
- 3 As to the meaning of 'landlord' see PARA 323 note 7.
- 4 Agricultural Holdings Act 1986 s 67(1).
- 5 Agricultural Holdings Act 1986 s 67(2). The agreement may be in the contract of tenancy itself: *Gardner v Beck* [1947] EGD 169.
- 6 Agricultural Holdings Act 1986 s 67(2). As to the statutory measure of compensation see PARA 441.
- 7 Ie as specified in the Agricultural Holdings Act 1986 Sch 7. See PARA 432.
- 8 Ie approved under the Hill Farming Act 1946 s 1. See also **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1335-1336.
- 9 Agricultural Holdings Act 1986 s 68(3)(a). The 'compensation provisions' are those of s 67(1) (see the text and notes 1-4).
- 10 Agricultural Holdings Act 1986 s 68(3)(b).

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#### **437. Short term improvements begun on or after 1 March 1948 and tenant right.**

The landlord's<sup>1</sup> consent or approval is not a prerequisite to a tenant's<sup>2</sup> claim for statutory compensation in respect of short term improvements<sup>3</sup>, nor in respect of tenant right matters<sup>4</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 Ie as specified in the Agricultural Holdings Act 1986 Sch 8 paras 1-6 (see PARA 432).
- 4 Ie as specified in the Agricultural Holdings Act 1986 Sch 8 paras 7-11 (see PARA 433).

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### 438. Notice of mole drainage.

A tenant<sup>1</sup> is not entitled to statutory compensation for mole drainage and works carried out to secure its efficient functioning<sup>2</sup>, unless, not later than one month before the improvement was begun, he gave notice in writing<sup>3</sup> to the landlord<sup>4</sup> of his intention to carry out the improvement<sup>5</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 I.e. the improvements specified in the Agricultural Holdings Act 1986 Sch 8 para 1 (see PARA 432).
- 3 As to the service of notices see PARA 328 note 4.
- 4 As to the meaning of 'landlord' see PARA 323 note 7.
- 5 Agricultural Holdings Act 1986 s 68(1).

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## (C) APPROVALS AND DIRECTIONS

### 439. Approval of agricultural land tribunal.

In the case of specified<sup>1</sup> long term improvements, a tenant<sup>2</sup> who is aggrieved by the refusal of his landlord<sup>3</sup> to consent to an improvement, or as to the conditions which the landlord seeks to impose as a prerequisite to his consent, may apply to the agricultural land tribunal<sup>4</sup> for approval of the carrying out of the improvement<sup>5</sup>. The tribunal may approve the carrying out of the improvement, either unconditionally or upon such terms as to reduce the compensation, or as to other matters, as may seem just, or may withhold its approval<sup>6</sup>. It is a prerequisite of a tenant's application to the tribunal that he must first have sought the landlord's consent. If approval is granted, the landlord may serve notice in writing on the tribunal, and on the tenant, that he himself proposes to carry out the improvement<sup>7</sup>. If the landlord does not serve such notice<sup>8</sup>, or if there was such a notice but the tribunal, on an application by the tenant, decides that the landlord has failed to carry out the improvement within a reasonable time<sup>9</sup>, the tribunal's approval takes effect as if it were the consent of the landlord, and any terms on which it was given take effect as if contained in a written agreement between the landlord and the tenant<sup>10</sup>. If the landlord does carry out the improvement he will be entitled to claim an increase in rent<sup>11</sup>.

- 1 I.e. specified in the Agricultural Holdings Act 1986 Sch 7 paras 9-28 (see PARA 432).
- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to the meaning of 'landlord' see PARA 323 note 7.
- 4 As to agricultural land tribunals see PARAS 670-673.
- 5 Agricultural Holdings Act 1986 s 67(3).
- 6 Agricultural Holdings Act 1986 s 67(4).

- 7 Agricultural Holdings Act 1986 s 67(5). As to the service of notices see PARA 328 note 4.
- 8 Agricultural Holdings Act 1986 s 67(6)(a).
- 9 Agricultural Holdings Act 1986 s 67(6)(b).
- 10 Agricultural Holdings Act 1986 s 67(6).
- 11 Ie under the Agricultural Holdings Act 1986 s 13 (see PARA 340).

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**440. Compensation to mesne landlord where fixed equipment provided under direction.**

Where, on the application of a sub-tenant, the agricultural land tribunal<sup>1</sup> has directed his immediate landlord<sup>2</sup> to do work for the provision, alteration or repair of fixed equipment<sup>3</sup> and that work constitutes a long term improvement<sup>4</sup>, the immediate landlord is entitled to claim compensation as respects that work against his superior landlord notwithstanding that the superior landlord has not consented to the carrying out of the work<sup>5</sup>. If, on the failure of the immediate landlord to comply with the direction, the sub-tenant has himself carried out the work, the compensation provisions<sup>6</sup> have effect for the purposes of a claim by the immediate landlord against his superior landlord as if the work had been carried out by the immediate landlord and as if any grant made to the sub-tenant in respect of the work out of money provided by Parliament had been made to the immediate landlord<sup>7</sup>.

- 1 As to agricultural land tribunals see PARAS 670-673.
- 2 As to the meaning of 'landlord' see PARA 323 note 7.
- 3 As to the meaning of 'fixed equipment' see PARA 332 note 6. As to the power to give such a direction see the Agricultural Holdings Act 1986 s 11; and PARA 337.
- 4 Ie an improvement specified in the Agricultural Holdings Act 1986 Sch 7 (see PARA 432).
- 5 Agricultural Holdings Act 1986 s 68(2)(a).
- 6 Ie the Agricultural Holdings Act 1986 ss 64, 66 (see PARAS 431-432, 441-442).
- 7 Agricultural Holdings Act 1986 s 68(2)(b).

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**(D) MEASURE OF COMPENSATION**

**441. Long term improvements begun on or after 1 March 1948.**

The amount of compensation payable for long term improvements<sup>1</sup> is an amount equal to the increase attributable to the improvement in the value of the agricultural holding<sup>2</sup> as a holding, having regard to the character and situation of the holding and the average requirements of tenants<sup>3</sup> reasonably skilled in husbandry<sup>4</sup>.

1   le those specified by the Agricultural Holdings Act 1986 Sch 7 (see PARA 432). Where an agricultural holding governed by the Agricultural Holdings Act 1986 on which long term improvements have been made or a special system of farming has been adopted becomes subject to a compulsory rights order for the purposes of opencast mining and at the end of the period of occupation the tenant's land has lost the benefit of the improvements or special system, the provisions of the Agricultural Holdings Act 1986 as to compensation for long term improvements and as to compensation for a special system of farming apply subject to the provisions of the Opencast Coal Act 1958 s 24(3)-(8): see s 24(1), (2); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 472. For this purpose 'long term improvements' are those of a description specified in the Agricultural Holdings Act 1986 Sch 7 whether begun before or after 1 March 1948: see the Opencast Coal Act 1958 s 24(9); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 472. The date mentioned above is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are in part derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

2   As to the meaning of 'agricultural holding' see PARA 323.

3   As to the meaning of 'tenant' see PARA 323 note 5.

4   Agricultural Holdings Act 1986 s 66(1). It should be noted that, unlike the position in respect of improvements under Sch 8 (see PARAS 431-433), the method for calculation is not prescribed in respect of improvements contained in Sch 7.

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#### **442. Short term improvements begun on or after 1 March 1948 and tenant right matters.**

The measure of statutory compensation and method of calculation for short term improvements<sup>1</sup> begun on or after 1 March 1948<sup>2</sup> and tenant right matters<sup>3</sup> is the value of the improvements or matters to an incoming tenant<sup>4</sup> calculated in accordance with such method, if any, as may be prescribed by regulations<sup>5</sup>. These regulations are frequently revised by a committee appointed by the Secretary of State and the Welsh Ministers<sup>6</sup> and cover in some detail such items as the additional value to an incoming tenant of an acclimatised flock of hill sheep on hill land<sup>7</sup>, the enhanced value of established autumn sown crops where the land is held under a spring tenancy<sup>8</sup> and, in certain areas, residual sod fertility<sup>9</sup>.

In the case of tenant right matters<sup>10</sup> no compensation is payable for crops or produce grown, seeds sown, cultivations, fallows or acts of husbandry performed or pastures laid down in contravention of the terms of a written tenancy agreement, unless this was reasonably necessary in consequence of the giving of a direction under the Agriculture Act 1947<sup>11</sup> or the tenant shows that the term of the contract contravened or was inconsistent with the fulfilment of his responsibilities to farm the holding<sup>12</sup> in accordance with the rules of good husbandry<sup>13</sup>.

Whilst a landlord<sup>14</sup> and tenant may substitute the method for calculating tenant right matters in a written contract of tenancy<sup>15</sup>, in the case of short term improvements it is not possible to contract outside the Agricultural Holdings Act 1986<sup>16</sup>, though consideration must be given in

respect of short term improvements to any benefit<sup>17</sup> given or allowed to the tenant by the landlord in an agreement in writing<sup>18</sup>. Further, where a grant out of money provided by Parliament or local government funds<sup>19</sup> has been or will be made to the tenant in respect of a short term improvement the grant must be taken into account when assessing compensation<sup>20</sup>.

A landlord and tenant may, however, agree in writing for compensation to be paid in cases not covered by the Agricultural Holdings Act 1986<sup>21</sup>.

1 See the Agricultural Holdings Act 1986 Sch 8 paras 1-6; and PARA 432.

2 The date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

3 See the Agricultural Holdings Act 1986 Sch 8 paras 7-11; and PARA 433.

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 Agricultural Holdings Act 1986 s 66(2). The regulations currently in force are the Agriculture (Calculation of Value for Compensation) Regulations 1978, SI 1978/809 (amended by SI 1980/751; SI 1981/822; SI 1983/1475).

6 Agricultural Holdings Act 1986 s 92. As to the Secretary of State and the Welsh Ministers see PARA 643. The committee is to consist of such number of persons, having such qualifications, as the Secretary of State and the Welsh Ministers think expedient, including persons appointed by the Secretary of State and the Welsh Ministers as having experience in land agency, farming, estate management and the valuation of tenant right: s 92(1).

7 The as provided for by the Agriculture (Calculation of Value for Compensation) Regulations 1978, SI 1978/809, Sch 1 para 11 (amended by SI 1983/1475). The present basis is a fixed monetary figure (currently £8 per sheep) and a percentage (currently 10%) of the market value of each sheep: Agriculture (Calculation of Value for Compensation) Regulations 1978, SI 1978/809, Sch 1 para 11(1) (as so amended).

8 Agriculture (Calculation of Value for Compensation) Regulations 1978, SI 1978/809, Sch 1 para 8(1)(c). The enhancement value must not exceed one year's rent of the ground sown to the crop: Sch 1 para 8(1)(c).

9 This was first introduced by the Agriculture (Calculation of Value for Compensation) Regulations 1978, SI 1978/809, Sch 1 para 12 (amended by SI 1980/751; SI 1983/1475).

10 See note 3.

11 Agricultural Holdings Act 1986 s 65(2)(a). Provision for the giving of directions was made under the Agriculture Act 1947 s 95 (repealed).

12 As to the 'farming' of land see PARA 324.

13 Agricultural Holdings Act 1986 s 65(2)(b). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

14 As to the meaning of 'landlord' see PARA 323 note 7.

15 See the Agricultural Holdings Act 1986 s 66(4); and PARA 415. As to the meaning of 'contract of tenancy' see PARA 325.

16 See the Agricultural Holdings Act 1986 s 78(1); and PARA 415.

17 The benefit may be a reduction in rent: *M'Quarter v Fergusson* 1911 SC 640, Ct of Sess. As to other benefits see *Earl of Galloway v M'Clelland* 1915 SC 1062, Ct of Sess (temporary pasture at commencement of lease held a benefit); *Findlay v Munro* 1917 SC 419, Ct of Sess (right to take two white crops not a benefit); *Mackenzie v Macgillivray* 1921 SC 722, Ct of Sess (landlord's abstention from terminating tenancy not a benefit).

18 Agricultural Holdings Act 1986 s 66(3).

19 As to the meaning of 'local government funds' see PARA 338 note 20.

20 Agricultural Holdings Act 1986 s 66(5).

21 See the Agricultural Holdings Act 1986 s 78(3); and PARA 415. That provision is subject to Sch 12 para 8, whereby if a tenant who entered into occupation of the holding prior to 1 March 1948 has not elected for tenant right compensation on a statutory basis, either as a whole or in relation to acclimatisation, hefting or settlement of hill sheep on hill land, his customary rights are preferred.

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## (E) LIMITATIONS ON COMPENSATION

### **443. Compensation limitation for tenancy made before 1 January 1921.**

A tenant<sup>1</sup> of an agricultural holding<sup>2</sup> is not entitled to statutory compensation for a relevant improvement<sup>3</sup> which he was required to carry out by the terms of his tenancy in the case of a contract of tenancy<sup>4</sup> made before 1 January 1921<sup>5</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the right to compensation, and as to the meaning of 'relevant improvement', see PARAS 431-432.

4 As to the meaning of 'contract of tenancy' see PARA 325.

5 Agricultural Holdings Act 1986 Sch 12 para 5. The date mentioned in the text is the date on which the Agriculture Act 1920, from which these provisions in part derive, was brought into force: see s 36(1) (repealed). In respect of contracts made on or after 1 January 1921 the landlord cannot require the tenant to contract out of his right to compensation: see s 78(1); and PARA 415.

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### **444. Compensation limitation by adjustment in respect of grants.**

Where a grant out of money provided by Parliament or local government funds<sup>1</sup> has been or will be made to the tenant<sup>2</sup> of an agricultural holding<sup>3</sup> in respect of a relevant improvement<sup>4</sup>, the grant must be taken into account<sup>5</sup> in assessing compensation under the Agricultural Holdings Act 1986 for the improvement<sup>6</sup>.

Where a person other than the tenant claiming compensation has contributed to the cost of carrying out works in compliance with an improvement notice<sup>7</sup>, or with an undertaking to improve housing accepted<sup>8</sup> by a local authority, compensation in respect of the works as relevant improvements must be reduced proportionately<sup>9</sup>.

1 As to the meaning of 'local government funds' see PARA 338 note 20.

- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to the meaning of 'agricultural holding' see PARA 323.
- 4 As to the right to compensation, and as to the meaning of 'relevant improvement', see PARAS 431-432.
- 5 The parties cannot contract out of the statutory prescribed measure for the improvements specified in the Agricultural Holdings Act 1986 Sch 8 paras 1-6 (see PARA 432) (in contrast with the position as to tenant right matters contained in Sch 8 paras 7-11 (see PARA 433)), but in both cases the benefits may be taken into account.
- 6 Agricultural Holdings Act 1986 s 66(5).
- 7 I.e. a notice under the Housing Act 1985 Pt VII (repealed). As to improvement notices see **HOUSING** vol 22 (2006 Reissue) PARA 368 et seq.
- 8 I.e. under the Housing Act 1985 s 211 (repealed).
- 9 Agricultural Holdings Act 1986 s 68(5)(b).

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#### **445. Compensation limitation by reason of breach of covenant of the tenancy.**

No compensation is payable to a tenant<sup>1</sup> for crops or produce grown, seeds sown, cultivations, fallows or acts of husbandry performed, or pasture laid down, in breach of the terms of a written contract of tenancy<sup>2</sup>, unless the growing of the crops or produce, the sowing of the seeds, the performance of the cultivations, the fallows or acts of husbandry, or the laying down of the pasture was reasonably necessary in consequence of the giving of a direction under the Agriculture Act 1947<sup>3</sup>, or the tenant shows that the term of the contract contravened was inconsistent with the fulfilment of his responsibilities to farm the holding<sup>4</sup> in accordance with the rules of good husbandry<sup>5</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to the meaning of 'contract of tenancy' see PARA 325.
- 3 Agricultural Holdings Act 1986 s 65(2)(a). Provision for the giving of directions was made under the Agriculture Act 1947 s 95 (repealed).
- 4 As to the 'farming' of land see PARA 324.
- 5 Agricultural Holdings Act 1986 s 65(2)(b). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

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#### **446. Compensation limitation by reason of improvement grant under the Hill Farming Act 1946.**

In assessing the amount of any compensation payable under custom or agreement to the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> under the Agricultural Holdings Act 1986, if it is shown to the satisfaction of the person assessing the compensation that the cultivations in respect of which the compensation is claimed were wholly or in part the result of or incidental to work in respect of the cost of which an improvement grant for livestock rearing land has been paid<sup>3</sup>, the amount of the grant must be taken into account as if it had been a benefit allowed to the tenant in consideration of his executing the cultivations, and the compensation will be reduced to such extent as that person considers appropriate<sup>4</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 le under the Hill Farming Act 1946 s 1 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1335-1336).

4 Agricultural Holdings Act 1986 s 68(4).

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### ***F. COMPENSATION FOR DISTURBANCE***

#### **447. Entitlement to compensation for disturbance.**

Under the Agricultural Holdings Act 1986 the tenant's<sup>1</sup> entitlement to compensation for disturbance may arise:

- 218 (1) in certain limited circumstances where the tenancy terminates<sup>2</sup> in consequence of a notice to quit given by the landlord<sup>3</sup> or of a counter-notice given by the tenant, enlarging the landlord's notice to quit part of the holding<sup>4</sup>, and the tenant quits the holding in consequence of the notice or counter-notice<sup>5</sup>; and
- 219 (2) where the tenant's interest is compulsorily acquired<sup>6</sup>.

The Agricultural Holdings Act 1986 grants the tenant the right to receive basic compensation<sup>7</sup> and in certain circumstances basic and additional compensation<sup>8</sup>.

The rules governing the tenant's entitlement differ in the case of basic and additional compensation<sup>9</sup>. However, in all cases no compensation is payable if the landlord's notice to quit is given for one of the reasons stated in Case C (bad husbandry)<sup>10</sup>, Case D (failure to comply with a notice to pay rent due or to remedy a breach of a term or condition of the tenancy)<sup>11</sup>, Case E (commission of any irremediable breach of a term or condition of the tenancy)<sup>12</sup>, Case F (insolvency of the tenant)<sup>13</sup> or Case G (death of sole or sole surviving tenant)<sup>14</sup>. Further, the tenant should in any event be able to show a causal link between the notice to quit and his departure<sup>15</sup>. However, where he holds over after the expiration of the notice and subsequently vacates the land after a judgment for possession or on being ejected, it is a question to be

decided on the facts of the case whether or not he quitted in consequence of the notice to quit<sup>16</sup>. A tenant who quits in consequence of a notice to quit, which is in fact invalid, but which he accepts as valid, is entitled to claim compensation for disturbance<sup>17</sup>.

Where the tenant has sub-let the holding and in consequence of a notice to quit given by his landlord has become liable to pay statutory compensation for disturbance to his sub-tenant, the tenant is not debarred from himself recovering such compensation from his landlord by reason only that, not being in occupation of the holding, he does not quit the holding on termination of his tenancy<sup>18</sup>.

The right to additional, but not basic, compensation is excluded in two further cases:

- 220 (a) where the notice to quit is given for one of the reasons stated in Case A (smallholdings)<sup>19</sup> or Case H (notice to quit by the Secretary of State or the Welsh Ministers for the purpose of the amalgamation or the reshaping of agricultural units)<sup>20</sup>; and
- 221 (b) where the notice to quit contains a statement either that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable on any of certain statutory grounds<sup>21</sup> or that the landlord will suffer hardship unless the notice has effect<sup>22</sup>.

If the landlord makes an application for consent to the operation of the notice to the agricultural land tribunal<sup>23</sup>, then it is a further condition of the exclusion that the tribunal should consent to its operation, stating in the reasons for its decision that it is satisfied as to any of the matters specified<sup>24</sup>. Accordingly, the additional compensation is not excluded where upon receipt of a notice to quit stating any of the grounds mentioned above, the tenant fails to serve a counter-notice<sup>25</sup>; nor where the tribunal consents to the operation of the notice for reasons connected with the purposes of enactments relating to smallholdings<sup>26</sup>; further, the additional compensation is payable where the tribunal gives more than one reason for consenting to the operation of the notice to quit and the reasons include a non-agricultural use<sup>27</sup> not falling within Case B<sup>28</sup>, and also where the landlord applies on the ground of sound management and the reasons given by the tribunal (whilst being satisfied on that ground) include a statement it would have also been satisfied on the ground of non-agricultural use not falling within Case B had that been specified in the notice<sup>29</sup>.

A point to note is that if a landlord serves a notice to quit without stating any reason he will be liable for basic and additional compensation<sup>30</sup>. In many cases, however, additional compensation becomes payable pursuant to a Case B notice to quit when the landlord has planning permission for non-agricultural development, and is viewed by the landlord as an acceptable price for recovery of the property.

It is not possible to contract out of entitlement to statutory compensation for disturbance under the Agricultural Holdings Act 1986<sup>31</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the termination of an agricultural tenancy see PARA 328 note 1.

3 Agricultural Holdings Act 1986 s 60(1)(a). As to the meaning of 'landlord' see PARA 323 note 7.

4 Agricultural Holdings Act 1986 s 60(1)(b).

5 Agricultural Holdings Act 1986 s 60(1). See PARA 453.

6 See, in particular, the Land Compensation Act 1973 s 48; and PARA 609. See also PARAS 607-608.

7 See the Agricultural Holdings Act 1986 s 60(2), (3); and PARA 448.



8 See the Agricultural Holdings Act 1986 s 60(4); and PARA 448.

9 Basic compensation entitlement is governed by the Agricultural Holdings Act 1986 s 60(2)(a) and additional compensation by s 60(2)(b) (see PARA 448).

10 See PARA 379.

11 See PARA 380.

12 See PARA 381.

13 See PARA 382.

14 Agricultural Holdings Act 1986 s 61(1). As to Case G see PARA 383.

15 This may also be of considerable importance for tax purposes. Provided a tenant can show that the amount paid to him pursuant to the Agricultural Holdings Act 1986 s 60 is on a true analysis a statutory sum to compensate him for loss or expense which is incurred, accordingly representing no element of gain, it would seem that no capital gains tax is payable on the receipt: *Davis v Powell* [1977] 1 All ER 471, [1977] 1 WLR 258; followed in *Drummond (Inspector of Taxes) v Austin Brown* [1983] STC 506 (a case under the provisions of the Landlord and Tenant Act 1954). Further, statutory compensation under these provisions is not to be seen as a capital sum derived from the disposal of an asset (the tenancy) nor as a capital sum received for the surrender of rights: *Davis v Powell*. However, if there is any element of 'bargain', such as termination on short notice rather than strict compliance with the statutory requirements, the capital gains tax exemption may be prejudiced.

16 *Preston v Norfolk County Council* [1947] KB 775, [1947] 2 All ER 124, CA (following *Mills v Rose* (1923) 68 Sol Jo 420, CA; distinguishing *Cave v Page* (1923) 67 Sol Jo 659, CA (a case under the Agricultural Holdings Act 1908 s 11 (repealed), disagreeing with *Hendry v Walker* 1927 SLT 333, Ct of Sess)). Cf also *Gulliver v Catt* [1952] 2 QB 308, [1952] 1 All ER 929, CA.

As to the meaning of 'landlord' for these purposes see PARA 323 note 7. The right subsists even where there is a change of landlord between the date of the notice and the date of quitting: *Dale v Hatfield Chase Corp* [1922] 2 KB 282, CA.

17 *Westlake v Page* [1926] 1 KB 299, CA; *Kestell v Langmaid* [1950] 1 KB 233, [1949] 2 All ER 749, CA. The notice must, however, be given by the landlord (within the definition in the Agricultural Holdings Act 1986: see PARA 323 note 7); and accordingly an equitable owner has no locus standi: *Bradshaw v Bird* [1920] 3 KB 144, CA; *Farrow v Orttwell* [1933] Ch 480.

18 Agricultural Holdings Act 1986 s 63(2).

19 See PARA 377.

20 Agricultural Holdings Act 1986 s 61(2). As to Case H see PARA 384.

21 I.e. the grounds contained in the Agricultural Holdings Act 1986 s 27(3)(a)-(c) (see PARA 375).

22 Agricultural Holdings Act 1986 s 61(3)(a).

23 As to agricultural land tribunals see PARAS 670-673.

24 Agricultural Holdings Act 1986 s 61(3)(b). In this provision the matters specified are those contained in s 27(3)(a)-(c), (e) (see PARA 375).

25 I.e. under the Agricultural Holdings Act 1986 s 26(1)(b) (see PARA 374). As to the service of notices see PARA 328 note 4.

26 I.e. the Agricultural Holdings Act 1986 s 27(3)(d) (see PARA 375). As to the enactments relating to smallholdings see PARA 488 et seq.

27 As to the meaning of 'agricultural' see PARA 324. As to the use of land for agriculture see PARA 324 note 7.

28 Agricultural Holdings Act 1986 s 61(4). As to non-agricultural use not falling within Case B see s 27(3)(f); and PARA 375.

29 Agricultural Holdings Act 1986 s 61(5).

30 It is open, however, to the tenant to block the landlord's notice by service of a counter-notice under the Agricultural Holdings Act 1986 s 26(1) (see PARA 374).

31 See the Agricultural Holdings Act 1986 s 78(1); and PARA 415.

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#### **448. Measure of compensation for disturbance.**

In the case of basic compensation<sup>1</sup> the amount payable is:

- 222 (1) an amount equal to one year's rent for the holding at the rate at which rent was payable immediately before the termination of the tenancy<sup>2</sup>; or
- 223 (2) an amount equal to either the amount of the tenant's<sup>3</sup> actual loss or two years' rent for the holding, whichever is the smaller<sup>4</sup>.

The 'amount of the tenant's actual loss' means the amount of the loss or expense directly attributable<sup>5</sup> to the quitting of the holding which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock in or used in connection with the holding, and includes any expenses reasonably incurred by him in the preparation of his claim for basic compensation (not being costs of an arbitration to determine the right to or the amount of the compensation for disturbance)<sup>6</sup>. Accordingly, the tenant may claim an amount equal to one year's rent for the holding at the rate at which rent was payable immediately before the termination of the tenancy without proof of loss or expense; but he cannot claim more without substantiating actual loss of the kind mentioned above, at the same time complying with two statutory requirements, the first being that not less than one month<sup>7</sup> before the termination of the tenancy he should give his landlord<sup>8</sup> notice in writing<sup>9</sup> of his intention to make such a claim<sup>10</sup> and the second being that before their sale he should give the landlord a reasonable opportunity<sup>11</sup> to make a valuation of any of such goods, implements, fixtures, produce or stock as may be comprised in the tenant's claim for actual loss<sup>12</sup>.

It would seem that notice in such circumstances by one joint tenant (the one who suffered loss) would be sufficient to substantiate a claim<sup>13</sup>; but caution would dictate that all be parties to the document.

The scope of the tenant's claim for actual loss is wide and has included loss due to the deterioration of stock on a sale<sup>14</sup> and the loss attributable to sheep not tied to the holding being sold at 'breakup' instead of 'going concern' value<sup>15</sup>. However, loss suffered on crops owing to an error in valuation by agreed arbitrators is not sufficiently attributable to the tenant's quitting the holding<sup>16</sup>.

Should the tenant substantiate a claim for additional compensation, the measure is a further four years' rent over and above any sums payable as basic compensation<sup>17</sup>. The maximum therefore to which a tenant may be entitled is six years' rent of the holding at the rate at which rent was payable immediately before the termination of the tenancy.

Compensation for disturbance is in addition to any compensation to which the tenant may be otherwise entitled<sup>18</sup>.

- 1 As to the entitlement to compensation for disturbance under the Agricultural Holdings Act 1986 see PARA 447.
- 2 Agricultural Holdings Act 1986 s 60(2)(a), (3)(a). As to the termination of an agricultural tenancy see PARA 328 note 1.
- 3 As to the meaning of 'tenant' see PARA 323 note 5.
- 4 Agricultural Holdings Act 1986 s 60(3)(b).
- 5 The scope of the words 'loss or expense directly attributable' has been considered in *Re Evans and Glamorgan County Council* (1912) 76 JP 468; *Barbour v M'Douall* 1914 SC 844, Ct of Sess; *Keswick v Wright* 1924 SC 766, Ct of Sess.
- 6 Agricultural Holdings Act 1986 s 60(5).
- 7 A resumption clause in a tenancy agreement is void if it does not permit the tenant sufficient time to give this notice: *Re Disraeli Agreement, Cleasby v Park Estate (Hughenden) Ltd* [1939] Ch 382, [1938] 4 All ER 658; *Coates v Diment* [1951] 1 All ER 890; *Parry v Million Pigs Ltd* (1980) 260 Estates Gazette 281.
- 8 As to the meaning of 'landlord' see PARA 323 note 7.
- 9 As to the service of notices see PARA 328 note 4.
- 10 Agricultural Holdings Act 1986 s 60(6)(a).
- 11 Whether a reasonable opportunity has been given is a question of fact for the arbitrator; merely giving notice of intention to claim compensation is not necessarily the giving of a reasonable opportunity, nor does the mere absence of a notice of sale prevent a reasonable opportunity being given: *Dale v Hatfield Chase Corp* [1922] 2 KB 282, CA. See also *Barbour v M'Douall* 1914 SC 844, Ct of Sess.
- 12 Agricultural Holdings Act 1986 s 60(6)(b).
- 13 *Howson v Buxton* (1928) 97 LJB 749, CA (doubted in *Jacobs v Chaudhuri* [1968] 2 QB 470, [1968] 2 All ER 124, CA (a case on the Landlord and Tenant Act 1954 s 24(1))). See also *Newman v Keedwell* (1977) 35 P & CR 393, 244 Estates Gazette 469; *Lloyd v Sadler* [1978] QB 774, [1978] 2 All ER 529, CA; *Featherstone v Staples* [1986] 2 All ER 461, [1986] 1 WLR 861, CA.
- 14 *Barbour v M'Douall* 1914 SC 844, Ct of Sess.
- 15 *Keswick v Wright* 1924 SC 766, Ct of Sess.
- 16 *Macgregor v Board of Agriculture for Scotland* 1925 SC 613, Ct of Sess.
- 17 Agricultural Holdings Act 1986 s 60(2)(b), (4).
- 18 Agricultural Holdings Act 1986 s 60(7).

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#### **449. Procedure for claiming compensation for disturbance.**

Apart from the preliminary notice required where a claim is made for basic compensation<sup>1</sup> of an amount greater than one year's rent of the holding<sup>2</sup>, compensation for disturbance is subject to the general rule that notice be given within two months after the date of termination<sup>3</sup>.

<sup>1</sup> As to the entitlement to compensation for disturbance under the Agricultural Holdings Act 1986 see PARAS 447-448.

2 See the Agricultural Holdings Act 1986 s 60(6)(a); and PARA 448.

3 Agricultural Holdings Act 1986 s 83(2). It is unclear whether one notice satisfies s 60(6)(a) and s 83(2): *Lady Hallinan v Jones* [1984] 2 EGLR 20, 272 Estates Gazette 1081.

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#### **450. Compensation for disturbance and sub-tenancies.**

Where the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> has sub-let the holding<sup>3</sup> and the sub-tenancy terminates<sup>4</sup> by operation of law in consequence of the termination of the tenancy by reason of a notice to quit or counter-notice<sup>5</sup>, the sub-tenant is entitled to compensation for disturbance as if he were a tenant quitting in consequence of such a notice or counter-notice<sup>6</sup>. Further, the tenant is not debarred from recovering such compensation by reason only that, owing to not being in occupation of the holding, on the termination of his tenancy he does not quit the holding<sup>7</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 Agricultural Holdings Act 1986 s 63(1)(a).

4 As to the termination of an agricultural tenancy see PARA 328 note 1.

5 Agricultural Holdings Act 1986 s 63(1)(b). See also s 60(1); and PARA 447.

6 Agricultural Holdings Act 1986 s 63(1). As to notices to quit given to sub-tenants see PARA 399.

7 See the Agricultural Holdings Act 1986 s 63(2); and PARA 447.

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### **G. COMPENSATION FOR ADOPTING A SPECIAL SYSTEM OF FARMING**

#### **451. Entitlement to compensation for high farming.**

Where the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> governed by the Agricultural Holdings Act 1986 shows that, by the continuous adoption of a system of farming<sup>3</sup> which has been more beneficial to the holding either than the system of farming required by the contract of tenancy<sup>4</sup> or, in so far as no system of farming is so required, than the system of farming normally practised on comparable agricultural holdings<sup>5</sup>, the value of the holding as such has been increased during the tenancy, having regard to the character and situation of the holding and the average requirements of tenants reasonably skilled in husbandry, he is entitled, on quitting the holding on the termination of his tenancy<sup>6</sup>, to obtain compensation for such 'high farming' from his landlord<sup>7</sup>. Payment of such compensation is subject to three provisos:

- 224 (1) it is not payable unless the tenant has, not later than one month before the termination of the tenancy, given to the landlord<sup>8</sup> notice in writing<sup>9</sup> of his intention to make such a claim<sup>10</sup>;
- 225 (2) a record of condition of the fixed equipment<sup>11</sup> in the holding and of the general condition of the holding must have been made<sup>12</sup>; and
- 226 (3) compensation is not payable in respect of any matter arising before the date of the record so made, or if more than one record has been made, before the first of them<sup>13</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 As to the 'farming' of land see PARA 324.
- 4 Agricultural Holdings Act 1986 s 70(1)(a). As to the meaning of 'contract of tenancy' see PARA 325.
- 5 Agricultural Holdings Act 1986 s 70(1)(b).
- 6 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 7 See the Agricultural Holdings Act 1986 s 70(1).
- 8 As to the meaning of 'landlord' see PARA 323 note 7.
- 9 As to the service of notices see PARA 328 note 4.
- 10 Agricultural Holdings Act 1986 s 70(2)(a).
- 11 As to the meaning of 'fixed equipment' see PARA 332 note 6.
- 12 Agricultural Holdings Act 1986 s 70(2)(b). The record of condition is to be made under s 22 (see PARA 349).
- 13 Agricultural Holdings Act 1986 s 70(3).

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#### **452. Amount of compensation for high farming.**

The amount of compensation for adopting a special system of farming<sup>1</sup> is the sum equivalent to the increase in the value of the agricultural holding<sup>2</sup>, this being an objective test which does not countenance other than the average requirements of a reasonably skilled tenant farmer. In assessing the value of the holding for these purposes due allowance is to be made for any compensation agreed or awarded to be paid to the tenant<sup>3</sup> for old<sup>4</sup> and relevant<sup>5</sup> improvements or, where the tenant is entitled to statutory compensation for tenant right matters<sup>6</sup>, to any such specified matter, if those improvements or matters have caused or contributed to the benefit<sup>7</sup>.

These provisions do not entitle a tenant to any compensation which he would not otherwise be entitled to recover for old or relevant improvements or for improvements in respect of which the statutory provisions relating to market gardens<sup>8</sup> apply or, where the tenant is within the statutory provisions relating to compensation for specified tenant right matters<sup>9</sup>, for those tenant right matters<sup>10</sup>. Accordingly, for example, a tenant could not employ a 'high farming'

claim to obtain compensation for a long term improvement<sup>11</sup> in respect of which he had failed to obtain the landlord's consent.

It is notoriously difficult to substantiate a claim for compensation in respect of 'high farming'. Few tenants, for example, would put in train a record of condition at a suitably early stage in their tenancy<sup>12</sup>.

1 As to entitlement to compensation for these purposes see PARA 451.

2 See the Agricultural Holdings Act 1986 s 70(1); and PARA 451. As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 As to the meaning of 'old improvement' see PARA 425.

5 As to the meaning of 'relevant improvement', see PARA 431.

6 As to such entitlement see the Agricultural Holdings Act 1986 Sch 8 paras 7-11; and PARA 433.

7 Agricultural Holdings Act 1986 s 70(4).

8 As to improvements in respect of market gardens see the Agricultural Holdings Act 1986 ss 79-81; and PARAS 464-468.

9 Ie under the Agricultural Holdings Act 1986 Sch 8 paras 7-11 (see PARA 433).

10 Agricultural Holdings Act 1986 s 70(5).

11 Ie under the Agricultural Holdings Act 1986 Sch 7 paras 1-8 (see PARA 432).

12 The claim for 'high farming' is generally seen as a 'dead letter'. There are also considerable difficulties in separating those improvements subject to a claim for 'high farming' from those subject to other claims.

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## ***H. GENERAL SUPPLEMENTARY PROVISIONS REGARDING COMPENSATION***

### **453. Compensation for quitting part of a holding.**

A tenant<sup>1</sup> may be given notice<sup>2</sup> to quit part of a holding in four circumstances:

- 227 (1) where such a notice is valid in specified cases<sup>3</sup>;
- 228 (2) in the case of a notice to quit within Case G (death of the tenant)<sup>4</sup> where the agricultural land tribunal<sup>5</sup> gives consent in relation to only part of the holding<sup>6</sup>;
- 229 (3) under a clause in the contract of tenancy<sup>7</sup>; and
- 230 (4) by the owner of a severed part of the reversion<sup>8</sup>.

Only in the first and last mentioned cases may he enlarge the landlord's<sup>9</sup> notice into a notice to quit the whole<sup>10</sup>.

Should the tenant quit part only, in the first three cases the compensation provisions are applicable as if the part of the holding were a separate holding<sup>11</sup> provided only that in the case

of resumption of possession of part pursuant to a clause in the contract of tenancy the arbitrator in assessing compensation (except additional compensation<sup>12</sup>) must take into consideration any benefit or relief allowed to the tenant under the contract of tenancy in respect of the land resumed by the landlord<sup>13</sup>. In the last mentioned case the compensation provisions are applicable to the part of the holding as if it were a separate holding which the tenant had quitted in consequence of the notice to quit and the person resuming possession were the landlord of that separate holding<sup>14</sup>.

If, in a case in which the tenant accepts a notice to quit part of his holding as a notice to quit the entire holding, the part of the holding affected by the notice given by the landlord, together with any other part of the holding affected by a previous notice given by the landlord to the tenant, is less than one-fourth part of the original holding, and the holding as proposed to be diminished is reasonably capable of being cultivated as a separate holding, statutory compensation for disturbance is not payable except in respect of the part of the holding to which the notice to quit related<sup>15</sup>. However, the enlarged notice to quit still terminates the tenancy of the whole.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to the service of notices see PARA 328 note 4.
- 3 See the Agricultural Holdings Act 1986 s 74(1); and PARA 419. See also s 31(1), (2); and PARA 395.
- 4 See PARA 383.
- 5 As to agricultural land tribunals see PARAS 670-673.
- 6 See the Agricultural Holdings Act 1986 s 74(1); and PARA 419. As to the restriction on the operation of a notice to quit given by reason of death of the tenant see s 43(1), (2); and PARA 406.
- 7 See the Agricultural Holdings Act 1986 s 74(2); and PARA 419. As to the meaning of 'contract of tenancy' see PARA 325.
- 8 See the Agricultural Holdings Act 1986 s 74(3); and PARA 419.
- 9 As to the meaning of 'landlord' see PARA 323 note 7.
- 10 See the Agricultural Holdings Act 1986 s 32; and PARA 398.
- 11 See the Agricultural Holdings Act 1986 s 74(1), (2); and PARA 419.
- 12 Ie under the Agricultural Holdings Act 1986 s 60(2)(b) (see PARA 448).
- 13 See the Agricultural Holdings Act 1986 s 74(2)(b); and PARA 419.
- 14 See the Agricultural Holdings Act 1986 s 74(3); and PARA 419.
- 15 Agricultural Holdings Act 1986 s 63(3).

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#### **454. Compensation for termination of a tenancy under an early resumption clause.**

Where the tenancy of an agricultural holding<sup>1</sup> or part of it terminates<sup>2</sup> by reason of a notice to quit under a provision authorising the resumption of possession for some specified purpose other than the use of the land for agriculture<sup>3</sup> and the tenant<sup>4</sup> quits the holding or part in consequence<sup>5</sup>, compensation, additional to any other compensation, is payable by the landlord<sup>6</sup> to the tenant of an amount equal to the value of the additional benefit, if any, which would have accrued to the tenant if the tenancy had been terminated by the notice to quit on the expiration of 12 months from the end of the year of tenancy current when the notice was given<sup>7</sup>. In the case of a tenancy for two years or upwards, the current year for this purpose is that beginning with such day in the 12 months ending with the date on which the notice to quit was served as corresponds to the day on which the term would expire by effluxion of time<sup>8</sup>.

1 As to the meaning of 'agricultural holding' see PARA 323.

2 As to the termination of an agricultural tenancy see PARA 328 note 1.

3 Agricultural Holdings Act 1986 s 62(1)(a). As to the meaning of 'agriculture' see PARA 324. As to the use of land for agriculture see PARA 324 note 7. The clause authorising early resumption is held void if it does not permit the tenant sufficient time to give all requisite notices: see PARA 373.

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 Agricultural Holdings Act 1986 s 62(1)(b).

6 As to the meaning of 'landlord' see PARA 323 note 7.

7 Agricultural Holdings Act 1986 s 62(2). The sums payable may be substantial, for example where the tenant loses vital buildings on short notice. The tenant need only serve notice of his claim within two months after the date of termination: s 83(2). Contracting out of these provisions is not possible: see s 78(1); and PARA 415.

8 Agricultural Holdings Act 1986 s 62(3).

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#### **455. Additional compensation on compulsory acquisition.**

Additional compensation may be payable where an interest in an agricultural holding governed by the Agricultural Holdings Act 1986 is acquired in pursuance of any enactment providing for the acquiring or taking of possession of land compulsorily<sup>1</sup>.

1 See the Agriculture (Miscellaneous Provisions) Act 1968 ss 12, 13; and PARAS 607-608.

### **UPDATE**

#### **455 Additional compensation on compulsory acquisition**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.



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## ***I. LANDLORD'S COMPENSATION FOR DETERIORATION OF HOLDING***

### **456. Landlord's compensation under the Agricultural Holdings Act 1986 for particular deterioration.**

A landlord<sup>1</sup> of an agricultural holding<sup>2</sup> governed by the Agricultural Holdings Act 1986 is entitled to recover from a tenant<sup>3</sup>, when that tenant quits the holding on the termination<sup>4</sup> of his tenancy<sup>5</sup>, compensation in respect of the dilapidation or deterioration of, or damage to, any part<sup>6</sup> of the holding or anything in or on the holding caused by the non-fulfilment by the tenant of his responsibilities to farm<sup>7</sup> in accordance with the rules of good husbandry<sup>8</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 As to the termination of an agricultural tenancy see PARA 328 note 1.

5 A statutory claim for dilapidations cannot be pursued during the currency of the tenancy except where the Opencast Coal Act 1958 s 25 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 473) or the Agricultural Holdings Act 1986 s 9 (transitional arrangements where liability in respect of fixed equipment is transferred: see PARA 335) applies.

6 These provisions specifically relate to dilapidations or deterioration affecting part of a holding or anything in or on the holding. Accordingly, for example, in *Evans v Jones* [1955] 2 QB 58, [1955] 2 All ER 118, CA, it was held that the deterioration of particular fields due to a failure to apply fertiliser gave rise to a claim under the statutory predecessor to the Agricultural Holdings Act 1986 s 71(1) (ie the Agricultural Holdings Act 1948 s 57 (repealed)).

7 As to the 'farming' of land see PARA 324.

8 Agricultural Holdings Act 1986 s 71(1). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

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### **457. Measure of landlord's compensation under the Agricultural Holdings Act 1986 for particular deterioration.**

The amount of compensation for particular deterioration payable under the Agricultural Holdings Act 1986<sup>1</sup> is the cost, as at the date of the tenant's<sup>2</sup> quitting the holding, of making good the dilapidation, deterioration or damage<sup>3</sup>, subject to a limitation that the costs must not

exceed the amount (if any) by which the value of the landlord's<sup>4</sup> reversion in the holding is diminished<sup>5</sup> owing to the specific dilapidation, deterioration or damage<sup>6</sup>.

1 See the Agricultural Holdings Act 1986 s 71(1); and PARA 456.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 Agricultural Holdings Act 1986 s 71(2). In *Barrow Green Estate Co v Walker's Executors* [1954] 1 All ER 204, [1954] 1 WLR 231, CA, it was held that in determining a claim under the predecessor to the Agricultural Holdings Act 1986 s 71 (ie the Agricultural Holdings Act 1948 s 57 (repealed)), the arbitrator was bound to take into account the terms of the contract of tenancy together with the terms of any other agreement affecting the holding and the statutory regulations as to repair.

4 As to the meaning of 'landlord' see PARA 323 note 7.

5 There is no rule that a tenant is required to leave the land as he found it. He must leave it in the condition required to discharge his responsibilities to farm in accordance with the rules of good husbandry: see *Williams v Lewis* [1915] 3 KB 493; *Evans v Jones* [1955] 2 QB 58, [1955] 2 All ER 118, CA; cf *Proudfoot v Hart* (1890) 25 QBD 42.

6 Agricultural Holdings Act 1986 s 71(5). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

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#### **458. Landlord's contractual compensation for particular deterioration.**

If a written contract of tenancy<sup>1</sup> provides for compensation in respect of matters otherwise falling within the statutory provision as to deterioration<sup>2</sup>, the landlord<sup>3</sup> may, in lieu of claiming compensation under that provision, claim compensation in reliance upon the contractual provisions<sup>4</sup>.

A landlord may not claim compensation both under the relevant statutory provisions<sup>5</sup> and under the contract of tenancy<sup>6</sup>. Where the landlord elects to rely upon his contractual claims, any claim by the landlord against the tenant<sup>7</sup> in respect of any liability for the maintenance or repair of any item of fixed equipment<sup>8</sup> transferred from the tenant to the landlord<sup>9</sup> must be disregarded<sup>10</sup>.

1 As to the meaning of 'contract of tenancy' see PARA 325.

2 See the Agricultural Holdings Act 1986 s 71(1); and PARA 456.

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 Agricultural Holdings Act 1986 s 71(3). Save in respect of the transitional exceptions in s 9 (see PARA 335), the contractual claim only arises at the termination of the tenancy: s 71(4)(a). However, in *Kent v Conniff* [1953] 1 QB 361, [1953] 1 All ER 155, CA, it was held that a landlord may bring a common law action for damages during the currency of a tenancy. Cf the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973, SI 1973/1473; and PARA 333. Note also the landlord's ability to obtain an injunction to restrain a tenant in the exercise of his rights relating to the disposal of produce and cropping where injury or deterioration is likely to be caused to the holding: see the Agricultural Holdings Act 1986 s 15(5); and PARA 344. As to the termination of an agricultural tenancy see PARA 328 note 1.

5     le the Agricultural Holdings Act 1986 s 71(1) (see PARA 456).

6     Agricultural Holdings Act 1986 s 71(4)(b). However, this does not preclude the landlord from claiming in the alternative provided he later abandons one head of claim: see *Boyd v Wilton* [1957] 2 QB 277, [1957] 2 All ER 102, CA.

7     As to the meaning of 'tenant' see PARA 323 note 5.

8     As to the meaning of 'fixed equipment' see PARA 332 note 6.

9     See the Agricultural Holdings Act 1986 ss 6-9; and PARAS 332-335.

10    Agricultural Holdings Act 1986 s 71(4).

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#### **459. Notices and disputes regarding landlord's compensation for particular deterioration.**

Any dispute in respect of the landlord's claim for compensation, whether in reliance upon the statutory provision<sup>1</sup> or the contract of tenancy<sup>2</sup>, is to be determined by arbitration<sup>3</sup>. For the landlord's claims to be enforceable, it is a prerequisite that notice be given within two months of the termination of the tenancy<sup>4</sup> of an intention to make such a claim<sup>5</sup>.

1     le the Agricultural Holdings Act 1986 s 71(1) (see PARA 456).

2     See PARA 458.

3     As to arbitrations generally see PARA 469 et seq.

4     As to the termination of an agricultural tenancy see PARA 328 note 1.

5     Agricultural Holdings Act 1986 s 83(2).

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#### **460. Landlord's compensation for general deterioration.**

Where, on the quitting of an agricultural holding<sup>1</sup> by the tenant<sup>2</sup> on the termination<sup>3</sup> of the tenancy, the landlord<sup>4</sup> shows that the value of the holding generally has been reduced by reason of any of the specified kinds of dilapidation, deterioration or damage<sup>5</sup> or by the tenant's non-fulfilment of his responsibilities to farm<sup>6</sup> in accordance with the rules of good husbandry<sup>7</sup>, the landlord, in so far as he is not compensated under statute pursuant to the provisions of a written contract of tenancy<sup>8</sup>, is entitled to a sum in compensation for general deterioration of the holding<sup>9</sup>.

- 1 As to the meaning of 'agricultural holding' see PARA 323.
- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 4 As to the meaning of 'landlord' see PARA 323 note 7.
- 5 Ie as specified in the Agricultural Holdings Act 1986 s 71(1) (see PARA 456).
- 6 As to the 'farming' of land see PARA 324.
- 7 Agricultural Holdings Act 1986 s 72(1). As to the rules of good husbandry for the purposes of the Agricultural Holdings Act 1986 see, by virtue of s 96(3) (see PARA 330 note 13), the Agriculture Act 1947 ss 10, 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.
- 8 As to the meaning of 'contract of tenancy' see PARA 325.
- 9 Agricultural Holdings Act 1986 s 72(2). A claim under s 72 may be made in conjunction with a claim under s 71, or as a separate claim; however, the landlord cannot recover compensation twice, ie once under each provision: see *Evans v Jones* [1955] 2 QB 58, [1955] 2 All ER 118, CA.

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#### **461. Measure of landlord's compensation for general deterioration.**

The amount of compensation payable in respect of general deterioration of the holding<sup>1</sup> is equal to the decrease attributable to the matter in question in the value of the holding as a holding, having regard to the character and situation of the holding and the average requirements of tenants reasonably skilled in husbandry<sup>2</sup>.

- 1 Ie under the Agricultural Holdings Act 1986 s 72(1) (see PARA 460).
- 2 Agricultural Holdings Act 1986 s 72(3).

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#### **462. Notices and disputes regarding landlord's compensation for general deterioration.**

The landlord<sup>1</sup> must have given written notice<sup>2</sup> to the tenant<sup>3</sup>, not later than one month before the termination of the tenancy<sup>4</sup>, of his intention to claim compensation for general deterioration<sup>5</sup>. Any dispute in respect of the landlord's claim for such compensation is to be determined by arbitration<sup>6</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the service of notices see PARA 328 note 4.
- 3 As to the meaning of 'tenant' see PARA 323 note 5.
- 4 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 5 Agricultural Holdings Act 1986 s 72(4). As to whether such a notice dispenses with the need for a notice under s 83(1) (see PARA 469) see *Lady Hallinan v Jones* [1984] 2 EGLR 20, 272 Estates Gazette 1081.
- 6 As to arbitrations generally see PARA 469 et seq.

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**463. Landlord's compensation claim for deterioration may survive successive tenancies.**

Where the tenant<sup>1</sup> of an agricultural holding<sup>2</sup> has remained on the holding, or on any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, during two or more tenancies, his landlord<sup>3</sup> does not lose his right to compensation in respect of any dilapidation, deterioration or damage to the holding<sup>4</sup> by reason only that the tenancy during which any act or omission occurred which caused the dilapidation, deterioration or damage to the holding was a tenancy other than the tenancy which was in existence when the tenant quits the holding<sup>5</sup>.

- 1 As to the meaning of 'tenant' see PARA 323 note 5.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 As to the meaning of 'landlord' see PARA 323 note 7.
- 4 Ie under the Agricultural Holdings Act 1986 ss 71, 72 (see PARAS 456-462).
- 5 Agricultural Holdings Act 1986 s 73(1) (s 73(1) amended, and s 73(2) added, by SI 2006/2805). Where the Agricultural Holdings Act 1986 applies in relation to a tenancy by virtue of the Agricultural Tenancies Act 1995 s 4(1)(g) (see PARAS 301, 321), the reference in the Agricultural Holdings Act 1986 s 73(1) to a 'substantial part of the land comprised in the holding' means a substantial part determined by reference to either area or value: s 73(2) (as so added)).

The amendments made by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, do not apply in relation to compensation payable on termination of a tenancy where that tenancy was granted before 19 October 2006 (ie the date on which art 6 was brought into force: see art 1(1)(b)): see art 6(8).

Note that any substantial change in the identity of the landlord or tenant would prevent s 73 being applicable: see *Jenkin R Lewis & Son Ltd v Kerman* [1971] Ch 477, [1970] 3 All ER 414, CA; cf *Trustees of Saunders v Ralph* (1993) 66 P & CR 335, [1993] 2 EGLR 1 (where the addition of a new tenant did not amount to the surrender of the old tenancy).

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AGRICULTURAL HOLDINGS ACT 1986/(viii) Market Gardens/464. Compensation for improvements to market gardens.

## **(viii) Market Gardens**

### **464. Compensation for improvements to market gardens.**

The statutory rights to compensation under the Agricultural Holdings Act 1986 payable to a tenant<sup>1</sup> of an agricultural holding<sup>2</sup> apply to market gardens<sup>3</sup> which fall into one of the following categories:

- 231 (1) where it has been agreed in writing<sup>4</sup> on or after 1 January 1896<sup>5</sup> that the holding<sup>6</sup> should be let or treated<sup>7</sup> as a market garden<sup>8</sup>;
- 232 (2) where the tenancy was current on 1 January 1896 and the holding<sup>9</sup> was at that date in use for cultivation as a market garden with the knowledge of the landlord<sup>10</sup>, and the tenant had then executed on the holding, without having received before the execution a written notice of dissent by the landlord, a 'market garden improvement' (other than one consisting of such an alteration of a building<sup>11</sup> as did not constitute an enlargement of it)<sup>12</sup>; or
- 233 (3) where an agricultural holding, or part of it, is directed to be treated as a market garden by the agricultural land tribunal<sup>13</sup>.

Further, in addition to the extended rights conferred in respect of such market gardens for the removal of fixtures and buildings<sup>14</sup>, the following special provisions apply with regard to compensation for improvements:

- 234 (a) in the case of improvements begun on or after 1 March 1948<sup>15</sup> (irrespective of landlord's consent), market garden improvements<sup>16</sup> qualify for compensation as if they were short term improvements<sup>17</sup> begun on or after that date<sup>18</sup>; and
- 235 (b) in the case of improvements begun before that date, those consisting of the erection or enlargement of, but not alteration to, buildings qualify for compensation as if they were old improvements<sup>19</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 As to the meaning of 'agricultural holding' see PARA 149.

3 As to the meaning of 'market garden' see PARA 324 note 4.

4 The agreement may be contained in the original contract of tenancy or otherwise.

5 Agricultural Holdings Act 1986 s 98(2), Sch 12 para 10(1). The date mentioned in the text is referable to the commencement of the Market Gardeners Compensation Act 1895.

6 Where the land to which the agreement relates consists of part of a holding only, the provisions apply as if that part were a separate holding: Agricultural Holdings Act 1986 s 79(1).

7 The word 'treated' does not mean simply that the holding must be in use or cultivation as a market garden, but that it must be let as a market garden by one person as landlord and occupied by the other as tenant. This provision has been held not to apply to a holding in fact used and cultivated as a market garden where the tenancy agreement contained a proviso that 'nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden': *Re Masters and Duveen* [1923] 2 KB 729, CA. 'Let as a market garden' means 'let for the purpose of' a market garden and therefore includes a permissive right to cultivate as a market garden: *Saunders-Jacobs v Yates* [1933] 1 KB 392; affd [1933] 2 KB 240, CA.

8 Agricultural Holdings Act 1986 s 79(1).

- 9 Where the land is part of an agricultural holding only, it is treated as a separate holding: Agricultural Holdings Act 1986 Sch 12 para 10(4).
- 10 As to the meaning of 'landlord' see PARA 323 note 7.
- 11 As to the meaning of 'building' see PARA 332 note 6.
- 12 Agricultural Holdings Act 1986 Sch 12 para 10(2). A 'market garden improvement' is an improvement of a kind specified in Sch 10 (see note 16).
- 13 See the Agricultural Holdings Act 1986 s 80; and PARA 465. As to agricultural land tribunals see PARAS 670-673.
- 14 See PARA 468.
- 15 Ie the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 16 Ie:
  - 54 (1) planting of standard or other fruit trees permanently set out (Agricultural Holdings Act 1986 Sch 10 para 1);
  - 55 (2) planting of fruit bushes permanently set out (Sch 10 para 2);
  - 56 (3) planting of strawberry plants (Sch 10 para 3);
  - 57 (4) planting of asparagus, rhubarb and other vegetable crops which continue productive for two or more years (Sch 10 para 4); and
  - 58 (5) erection, alteration or enlargement of buildings for the purpose of the trade or business of a market gardener (Sch 10 para 5).
- 17 For short term improvements see the Agricultural Holdings Act 1986 Sch 8 paras 1-6; and PARA 432.
- 18 Agricultural Holdings Act 1986 s 79(2).
- 19 Agricultural Holdings Act 1986 s 79(2). The 'old improvements' referred to in the text are those included in Sch 9 Pt II (see PARA 426).

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#### **465. Direction by agricultural land tribunal as to market gardens.**

In order to obtain a direction from the agricultural land tribunal<sup>1</sup> that an agricultural holding<sup>2</sup>, or part of it, is to be treated as a market garden<sup>3</sup>, the tenant<sup>4</sup> must first establish that the landlord<sup>5</sup> refused, or failed within a reasonable time, to agree in writing that the holding or that part of it, as the case may be, is to be treated as a market garden<sup>6</sup>. On an application by the tenant for such a direction the tribunal may, after being satisfied that the holding or part is suitable for the purposes of market gardening, direct that the special compensation provisions<sup>7</sup> apply to the holding or part of it in relation to all the market garden improvements<sup>8</sup> or to some only<sup>9</sup>.

Where a direction is given by the tribunal, then if the tenancy is terminated by notice to quit given by the tenant or by reason of the tenant becoming insolvent<sup>10</sup>, the tenant is not entitled to compensation in respect of the improvements specified in the direction unless two conditions are satisfied<sup>11</sup>. The first of these is that the tenant, not later than one month after the date on which the notice to quit is given<sup>12</sup> or the date of the insolvency<sup>13</sup>, as the case may

be, or such later date as may be agreed, produces to the landlord an offer in writing by a substantial or otherwise suitable person (being an offer which is to hold good for a period of three months from the date on which it is produced):

- 236 (1) to accept a tenancy of the holding from the termination of the existing tenancy<sup>14</sup>, and on the terms and conditions of that tenancy so far as applicable<sup>15</sup>; and
- 237 (2) subject to the following provisions, to pay to the outgoing tenant all compensation payable under the Agricultural Holdings Act 1986 or under the contract of tenancy<sup>16</sup>.

The second is that the landlord fails to accept the offer within three months after it has been produced<sup>17</sup>.

If the landlord accepts any such offer, the incoming tenant must pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of the rent or breach of contract or otherwise in respect of the holding, and any amount so paid may, subject to any agreement between the outgoing tenant and the incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant<sup>18</sup>.

Any direction given by the agricultural land tribunal that an agricultural holding, or part of it, is to be treated as a market garden, may be given subject to such conditions (if any) for the protection of the landlord as the tribunal thinks fit<sup>19</sup>. Without prejudice to the generality of this provision, where a direction relates to part only of an agricultural holding, it may, on the application of the landlord, be given subject to the condition that it is to become operative only in the event of the tenant's consenting to the division of the holding into two parts, of which one must be that to which the direction relates, to be held at rents settled, in default of agreement, by arbitration under the Agricultural Holdings Act 1986<sup>20</sup>, but otherwise on the same terms and conditions (so far as applicable) as those on which the holding is held<sup>21</sup>.

A new tenancy created by the acceptance of a tenant in accordance with these provisions on the terms and conditions of the existing tenancy is deemed for the purposes of the supplementary provisions in respect of arbitration as to rent<sup>22</sup> not to be a new tenancy<sup>23</sup>.

1 As to agricultural land tribunals see PARAS 670-673.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'market garden' see PARA 324 note 4.

4 As to the meaning of 'tenant' see PARA 323 note 5.

5 As to the meaning of 'landlord' see PARA 323 note 7.

6 Agricultural Holdings Act 1986 s 80(1).

7 I.e the Agricultural Holdings Act 1986 s 79(2)-(5) (see PARAS 464, 468).

8 I.e the improvements specified in the Agricultural Holdings Act 1986 Sch 10 (see PARA 464 note 16).

9 Agricultural Holdings Act 1986 s 80(2).

10 As to when a tenant is 'insolvent' see PARA 373 note 4; definition applied by the Agricultural Holdings Act 1986 s 80(9).

11 Agricultural Holdings Act 1986 s 80(3). The provisions contained in s 80(3)-(5) are known as the 'Evesham custom': see further PARA 466.

12 As to the service of notices see PARA 328 note 4.



- 13 The reference to the date of the insolvency is a reference to the date of the occurrence of the event in question: Agricultural Holdings Act 1986 s 80(9).
- 14 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 15 Agricultural Holdings Act 1986 s 80(4)(a)(i).
- 16 Agricultural Holdings Act 1986 s 80(4)(a)(ii). As to the meaning of 'contract of tenancy' see PARA 325.
- 17 Agricultural Holdings Act 1986 s 80(4)(b).
- 18 Agricultural Holdings Act 1986 s 80(5).
- 19 Agricultural Holdings Act 1986 s 80(6).
- 20 As to arbitrations generally see PARA 469 et seq.
- 21 Agricultural Holdings Act 1986 s 80(7).
- 22 Ie the provisions of the Agricultural Holdings Act 1986 Sch 2, supplementary to s 12 (see PARA 338).
- 23 Agricultural Holdings Act 1986 s 80(8).

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#### **466. Substituted compensation by agreement: Evesham custom.**

A landlord<sup>1</sup> and tenant<sup>2</sup> may agree in writing to substitute the statutory compensation payable in respect of market garden improvements<sup>3</sup> for agreed compensation provided it is fair and reasonable<sup>4</sup> having regard to the circumstances existing when the agreement was entered into by the parties<sup>5</sup>. Where the landlord and tenant of an agricultural holding<sup>6</sup> have agreed that the holding be let or treated as a market garden<sup>7</sup> they may by agreement in writing substitute for the provisions as to compensation which would otherwise be applicable to the holding the provisions as to compensation known as the 'Evesham custom'<sup>8</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to the right to compensation for improvements to market gardens see PARA 464.
- 4 In *Bell v Graham* 1908 SC 1060, Ct of Sess, it was held that 'if parties of full age sign an agreement the presumption of fact is very strong that it is fair and reasonable'.
- 5 Agricultural Holdings Act 1986 s 81(1).
- 6 As to the meaning of 'agricultural holding' see PARA 323.
- 7 As to the meaning of 'market garden' see PARA 324 note 4.
- 8 Agricultural Holdings Act 1986 s 81(2). The Evesham custom for compensation was abolished by the Agriculture Act 1947 s 27 but its provisions have been enacted by statute (see the Agricultural Holdings Act 1986 s 80(3)-(5); and PARA 465). Section 81(2) overrides in these circumstances the provisions of s 77 (see PARA 417) providing that there is to be no compensation under custom for any improvement or tenant right matter. For the custom to apply, the tenancy must be terminated either by the tenant's notice to quit or by reason of the tenant's insolvency: see s 80(3); and PARA 465.

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#### **467. Measure of compensation for market garden improvements.**

The measure of compensation for market garden improvements<sup>1</sup> is the value to the incoming tenant<sup>2</sup>.

1     le the improvements specified in the Agricultural Holdings Act 1986 Sch 10 (see PARA 464 note 16). As to the meaning of 'market garden' see PARA 324 note 4.

2     This is implied by the provision in the Agricultural Holdings Act 1986 s 79(2) (see PARA 464) that the Act is to apply as if improvements in Sch 10 were included among those in Sch 8 paras 1-6 (see s 66(2); and PARAS 432, 442).

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#### **468. Removal of fixtures from market gardens.**

The statutory right of removal<sup>1</sup> applies to every fixture or building<sup>2</sup> affixed or erected by the tenant<sup>3</sup> to or upon a holding or acquired by him after 1 January 1901<sup>4</sup> for the purposes of a trade or business as a market gardener<sup>5</sup>, either:

238 (1)     when it has been agreed in writing on or after 1 January 1896<sup>6</sup>, that the holding<sup>7</sup> should be let or treated<sup>8</sup> as a market garden<sup>9</sup>; or

239 (2)     where the tenancy was current on 1 January 1896 and the holding<sup>10</sup> was at that date in use or cultivation as a market garden with the knowledge of the landlord<sup>11</sup>, and the tenant had then executed on the holding, without having received before the execution a written notice<sup>12</sup> of dissent by the landlord, a market garden improvement<sup>13</sup>.

The general restriction on the removal of buildings where the tenant is entitled to compensation<sup>14</sup> does not apply to any building erected by the tenant on the holding or acquired by him for the purposes of his trade or business as a market gardener<sup>15</sup>, and the restriction on the removal of fixtures or buildings affixed or erected before 1 January 1884<sup>16</sup> does not apply to any building acquired by him for those purposes, whenever erected<sup>17</sup>. Further, in such cases the tenant may also remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out, but, if he does not remove them before the termination of his tenancy<sup>18</sup>, they remain the property of the landlord, and the tenant is not entitled to any compensation in respect of them<sup>19</sup>.

The above provisions as to fixtures and buildings may be excluded by agreement between the landlord and tenant<sup>20</sup>; and, if a tenant is entitled by the custom of the country to remove

machinery or fixtures, that right is preserved to him, and may be exercised by him according to the custom without any statutory restrictions<sup>21</sup>.

1 As to the statutory right to remove fixtures generally see the Agricultural Holdings Act 1986 s 10; and PARA 336.

2 As to the meaning of 'building' see PARA 332 note 6.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 I.e. the date on which the Agricultural Holdings Act 1900 s 4 (repealed), which first extended the rights in question to fixtures acquired by the tenant as opposed to those affixed or erected by him, was brought into force. The time limit is only referable to the acquisition of fixtures and buildings: Agricultural Holdings Act 1986 Sch 12 para 3.

5 See PARA 464 et seq. As to the meaning of 'market garden' see PARA 324 note 4.

6 Agricultural Holdings Act 1986 Sch 12 para 10(1). The date mentioned in the text is referable to the commencement of the Market Gardeners Compensation Act 1895.

7 Where the land to which the agreement relates consists of part of a holding only, the provisions apply as if that part were a separate holding: Agricultural Holdings Act 1986 s 79(1).

8 'Treated' means treated as between landlord and tenant for the purposes of their rights in respect of the holding, rather than 'used' or 'cultivated': *Re Masters and Duveen* [1923] 2 KB 729, CA.

9 Agricultural Holdings Act 1986 s 79(1).

10 Where the use or cultivation takes place on part only of an agricultural holding, these provisions apply as if that part were a separate holding: Agricultural Holdings Act 1986 Sch 12 para 10(4).

11 As to the meaning of 'landlord' see PARA 323 note 7.

12 As to the service of notices see PARA 328 note 4.

13 Agricultural Holdings Act 1986 Sch 12 para 10(2), (3). The improvements referred to are those specified in the Agricultural Holdings Act 1986 Sch 10 (see PARA 464 note 16). Improvements consisting of such alterations of buildings as do not constitute enlargements of them are excepted: Sch 12 para 10(2)(b).

14 I.e. the restriction made by the Agricultural Holdings Act 1986 s 10(2)(c) (see PARA 336).

15 Agricultural Holdings Act 1986 s 79(3)(a).

16 I.e. the restriction made by the Agricultural Holdings Act 1986 s 10(2)(d) (see PARA 336). The date mentioned in the text is the date on which the Agricultural Holdings (England) Act 1883, from which these provisions in part derive, was brought into force: see s 53 (repealed).

17 Agricultural Holdings Act 1986 s 79(3)(b).

18 As to the termination of an agricultural tenancy see PARA 328 note 1. Removal after termination may lead to a liability in damages: see *Barff v Probyn* (1895) 64 LJQB 557.

19 Agricultural Holdings Act 1986 s 79(4). See also s 79(2), Sch 10; and PARA 464.

20 *Mears v Callender* [1901] 2 Ch 388; *Premier Dairies Ltd v Garlick* [1920] 2 Ch 17; *Re Masters and Duveen* [1923] 2 KB 729, CA.

21 Agricultural Holdings Act 1986 s 97.

## **(ix) Determination of Claims on Termination of Tenancy**

### **A. METHOD AND TIME**

#### **469. Resolving disputes.**

Any claim arising on the termination<sup>1</sup> of a tenancy of an agricultural holding<sup>2</sup> protected by the Agricultural Holdings Act 1986 may, and generally will, be settled by agreement between the parties or their respective agents; if, however, disputes which cannot be settled by agreement arise, they will be settled by arbitration under the Arbitration Act 1996<sup>3</sup>.

1 As to the termination of an agricultural tenancy see PARA 328 note 1.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 See the Agricultural Holdings Act 1986 ss 83(1), 84(1) (s 84(1) amended, and s 84(5) substituted, by SI 2006/2805) (providing that any matter which by or by virtue of the Agricultural Holdings Act 1986 or regulations made thereunder is required to be determined by arbitration must, notwithstanding any agreement (under a contract of tenancy or otherwise) providing for a different method of arbitration, be determined by the arbitration of a single arbitrator); and PARA 470 et seq. Arbitrations under the Agricultural Holdings Act 1986 were previously governed by specific arbitration provisions contained therein; however, following the amendments made by the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, SI 2006/2805, arts 7, 18, Sch 2 (in particular, the repeal of the Agricultural Holdings Act 1986 Sch 11, which contained the mechanisms governing arbitrations under that Act), the Agricultural Holdings Act 1986 no longer makes specific provision for arbitrations thereunder and the Arbitration Act 1996 Pt I (ss 1-84) (see **ARBITRATION** vol 2 (2008) PARA 1209 et seq), which governs all arbitrations for which specific provision is not made, accordingly applies. Where by virtue of the Agricultural Holdings Act 1986 compensation under an agreement is to be substituted for compensation under the Agricultural Holdings Act 1986 for improvements or for any such matters as are specified in Sch 8 paras 7-11 (compensation for tenant right matters: see PARA 433) the arbitrator must award compensation in accordance with the agreement instead of in accordance with the Agricultural Holdings Act 1986: s 84(5) (as so substituted).

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#### **470. Notice of arbitration claims.**

Any claim for compensation under the Agricultural Holdings Act 1986 by the landlord<sup>1</sup> or the tenant<sup>2</sup> must be made before the expiration of two months from the termination of the tenancy<sup>3</sup> or the termination of occupation where a tenant lawfully remains in occupation<sup>4</sup> of part of a holding after the termination of the tenancy and the claim relates to that part<sup>5</sup>. This provision does not refer to cases where, under the contract of tenancy itself, for example in an express holdover clause, possession of one part of the holding must be given up at a different date from the rest; in such a case, the tenancy does not terminate until the later date<sup>6</sup>.

The claim must be made by notice in writing<sup>7</sup>. Failure to serve the notice within the two month period will be fatal to the claim<sup>8</sup>. A condition in a tenancy agreement which reduces the time within which a claim must be made is void<sup>9</sup>. An indication of an intention to serve a notice is not sufficient<sup>10</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

- 2 As to the meaning of 'tenant' see PARA 323 note 5.
- 3 As to the termination of an agricultural tenancy see PARA 328 note 1.
- 4 A mere right of access for the purpose of tending and removing a crop is not a continued occupation: *Coutts v Barclay-Harvey* 1956 SLT (Sh Ct) 54.
- 5 Agricultural Holdings Act 1986 s 83(2), (6).
- 6 The Agricultural Holdings Act 1986 s 83(6) refers to the continuation of occupation, a term to be used in contrast with legal possession. In *Swinburne v Andrews* [1923] 2 KB 483, CA, Bankes LJ expressed the opinion that the provision applied to the case where, after the termination of the tenancy, the tenant is allowed to remain in possession of part for a time. See also *Re Arden and Rutter* [1923] 2 KB 865, CA; *Coutts v Barclay-Harvey* 1956 SLT (Sh Ct) 54. Any holdover must be lawful; the Agricultural Holdings Act 1986 s 83(6) does not apply where the tenant has refused to vacate after the expiration of a notice to quit or the termination of the tenancy by other means.
- 7 Agricultural Holdings Act 1986 s 83(2). As to the service of notices see PARA 328 note 4.
- 8 Agricultural Holdings Act 1986 s 83(2).
- 9 *Cathcart v Chalmers* [1911] AC 246, HL.
- 10 *Lady Hallinan v Jones* [1984] 2 EGLR 20, 272 Estates Gazette 1081, County Court. In that case it was held that a notice served under the provision in the Agricultural Holdings Act 1948 now contained in the Agricultural Holdings Act 1986 s 72 (see PARAS 460-462) that a claim for compensation for general deterioration of a holding must be given not later than one month before the termination of the tenancy satisfied the requirements of s 72(4) and s 83(2) so that there was no need to serve a separate notice under s 83(2) once the tenancy had actually terminated.

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#### **471. Contents of notice of claim.**

The notice of an arbitration claim<sup>1</sup> must specify the nature of the claim being made by the landlord<sup>2</sup> or the tenant<sup>3</sup>, although it is sufficient if the notice refers to the statutory provision, custom or term of an agreement under which the claim is made<sup>4</sup>. It is not, however, necessary to employ that method: the purpose of the notice of claim is to enable the party receiving it to know, in general terms, the nature of the claim<sup>5</sup>. Notices are not therefore to be construed with great strictness and are not invalidated by errors other than those calculated to mislead<sup>6</sup>. A notice may be framed in the alternative, leaving the claimant to elect at a later stage which of two mutually inconsistent claims he will pursue<sup>7</sup>.

- 1 See PARA 470.
- 2 As to the meaning of 'landlord' see PARA 323 note 7.
- 3 Agricultural Holdings Act 1986 s 83(3). As to the meaning of 'tenant' see PARA 323 note 5.
- 4 Agricultural Holdings Act 1986 s 83(3).
- 5 In *Lord Newborough v Davies* (1966) 116 NLJ 1291, a landlord served a written notice of claim headed 'Notice under Section 70 of the Agricultural Holdings Act 1948', which was supported by a schedule of details of the work necessary and the cost involved; it was held that the notice sufficiently specified the nature of the claim since it referred to the Agricultural Holdings Act 1948 s 70 (repealed) and the schedule obviously gave effect to s 70(2) (now the Agricultural Holdings Act 1986 s 83). See also *Re Hewetson and Pennington-Ramsden's Arbitration* (1966) 116 NLJ 613, County Court. For a comparison between the preliminary notice of

intention to claim under the Agricultural Holdings Act 1986 s 83(2) and the subsequent statement of case to be delivered to the arbitrator see *ED & AD Cooke Bourne (Farms) Ltd v Mellows* [1983] QB 104, [1982] 2 All ER 208, CA.

6 *Frankland v Capstick* [1959] 1 All ER 209, [1959] 1 WLR 205, CA. As to the construction of notices generally see *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, [1997] 3 All ER 352, HL.

7 *Boyd v Wilton* [1957] 2 QB 277, [1957] 2 All ER 102, CA. The Agricultural Holdings Act 1923 s 16(2) (repealed) required 'particulars' of the claim to be given by the party claiming. In cases under that provision notices have been held to satisfy the requirement or not according to whether they gave the party against whom the claim was made fair notice of the claim against him: see *Spreckley v Leicestershire County Council* [1934] 1 KB 366; *Re O'Connor and Brewin's Arbitration* [1933] 1 KB 20. It has been suggested, by reference to the Scottish cases in particular, that a mere reference to the number of a clause in a tenancy agreement may be insufficient for specifying the nature of the claim: see *Simpson v Henderson* 1944 SC 365, Ct of Sess; *Adam v Smythe* 1948 SC 445, Ct of Sess; *Edinburgh Corp v Gray* 1948 SC 538, Ct of Sess.

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#### **472. Period for agreed settlement.**

The parties have a fixed period of eight months from the termination of the tenancy<sup>1</sup>, or the occupation of the part of the holding to which the claim relates where the tenant remains in lawful occupation of that part after the termination of his tenancy<sup>2</sup>, in which to agree in writing to settle any claims<sup>3</sup>. If, at the end of the eight month period, agreement has not been reached in writing then the claims must be determined by arbitration<sup>4</sup>. There is no provision for extending the eight month period by agreement<sup>5</sup>.

1 As to the termination of an agricultural tenancy see PARA 328 note 1.

2 Agricultural Holdings Act 1986 s 83(6).

3 Agricultural Holdings Act 1986 s 83(4).

4 Agricultural Holdings Act 1986 s 83(5).

5 Following the principles adopted by the House of Lords in *Kammins Ballroom Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850, [1970] 2 All ER 871, HL, it is submitted that the parties may agree to waive the eight month time limit.

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#### **473. Appointment of arbitrator.**

If the parties fail to reach an agreement in writing as to any claims arising under the Agricultural Holdings Act 1986 within eight months, the claim must be determined by arbitration<sup>1</sup>. In other cases where the statutory arbitration procedure is invoked under the Act, various other time limits apply. In the case of rent review pursuant to a demand for arbitration the arbitrator must be appointed before the date when the new rent will come into effect if the

appointment is made by agreement<sup>2</sup>. If an appointment is not agreed between the parties, the application for the appointment of the arbitrator must be made before the date from which the new rent will come into effect<sup>3</sup>. In the case of a notice to quit given for one of specified reasons the arbitrator must be appointed within three months of the date of the demand for arbitration, otherwise the demand is rendered ineffective and the notice to quit takes effect regardless of whether or not the landlord could have established the ground referred to in the notice<sup>4</sup>. In all other cases there are no such time limits, although regard must be had to the equitable doctrines of waiver, estoppel and laches.

The arbitrator must be a person appointed by agreement between the parties or, in default of agreement, a person appointed on the application of either of the parties by the President of the Royal Institution of Chartered Surveyors (the 'RICS')<sup>5</sup>.

1 See the Agricultural Holdings Act 1986 s 83(4), (5); and PARA 472.

2 See the Agricultural Holdings Act 1986 s 12, Sch 2; and PARA 338.

3 See the Agricultural Holdings Act 1986 s 12(3); and PARA 338.

4 See the Agricultural Holdings (Arbitration on Notices) (Variation) Order 1987, SI 1987/710, art 10; and PARA 391.

5 Agricultural Holdings Act 1986 s 84(2), (6) (s 84(2)-(4) substituted, and s 84(6) added, by SI 2006/2805). As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71. No application may be made to the President of the RICS for an arbitrator to be appointed by him under the Agricultural Holdings Act 1986 s 84 unless the application is accompanied by such fee as may be prescribed as the fee for such an application; but once the fee has been paid in connection with any such application no further fee is payable in connection with any subsequent application for the appointment by him of a new arbitrator in relation to that arbitration: s 84(4) (as so substituted). At the date at which this volume states the law the fee is £115: Agricultural Holdings (Fees) Regulations 1996, SI 1996/337, reg 2(b) (amended by SI 2006/2805). If the arbitrator dies, or is incapable of acting, a new arbitrator may be appointed as if no arbitrator had been appointed: Agricultural Holdings Act 1986 s 84(3) (as so substituted).

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## **B. RECOVERY OF SUM DUE**

### **474. Recovery by action.**

Any sum agreed or awarded to be paid by way of compensation, costs or otherwise by a landlord<sup>1</sup> or a tenant<sup>2</sup>, if not paid within 14 days after the payment becomes due, may be recovered, except as otherwise provided<sup>3</sup>, upon an order made by the county court as if it were payable under an order of that court<sup>4</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 See the Agricultural Holdings Act 1986 s 85(3) (sums not recoverable against a trustee landlord personally); and PARA 476.

4 Agricultural Holdings Act 1986 s 85(1). The correctness of the decision in *Horrell v Lord St John of Bletso* [1928] 2 KB 616, that the similar provision in the Agricultural Holdings Act 1923 s 19 (repealed) did not preclude recovery in the High Court where the sum involved was in excess of that ordinarily recovered in the

county court, was doubted in *Jones v Pembrokeshire County Council* [1967] 1 QB 181, [1966] 1 All ER 1027 (applying *Re Jones and Carter's Arbitration* [1922] 2 Ch 599, CA). As to the satisfaction of county court judgments see the County Courts Act 1984 s 71; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1229.

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#### **475. Tenant's charge for compensation.**

Where a sum becomes due to a tenant<sup>1</sup> as compensation<sup>2</sup> from the landlord<sup>3</sup> and the landlord fails to pay it within one month, the tenant is entitled to obtain from the Secretary of State or the Welsh Ministers<sup>4</sup> an order charging the holding with the amount due<sup>5</sup>.

1 As to the meaning of 'tenant' see PARA 323 note 5.

2 The provision does not extend to 'costs or otherwise', the phrase used in the Agricultural Holdings Act 1986 s 85(1) (see PARA 474) or 'any sum agreed or awarded' under the Act, the phrase used in s 85(3)(a) (see PARA 476).

3 As to the meaning of 'landlord' see PARA 323 note 7.

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 Agricultural Holdings Act 1986 s 85(2).

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#### **476. Recovery where landlord not beneficial owner.**

Where a landlord<sup>1</sup> of an agricultural holding<sup>2</sup> is entitled to receive the rents and profits otherwise than for his own benefit, whether as trustee or otherwise, he is not liable to pay any sum agreed or awarded under the Agricultural Holdings Act 1986 to be paid to the tenant<sup>3</sup> or awarded under that Act to be paid by the landlord, and it is not recoverable from him personally<sup>4</sup>. If such a landlord fails to pay any sum agreed or awarded under the Agricultural Holdings Act 1986 payable by the landlord to the tenant within one month after the payment becomes due, the tenant may obtain from the Secretary of State or the Welsh Ministers<sup>5</sup> an order charging the holding with the payment of the sum due<sup>6</sup>. Where a landlord entitled so to receive the rents and profits proposes to pay or pays to the tenant the sum due, he is himself entitled, either before or after making a payment, to obtain from the Secretary of State or the Welsh Ministers an order charging the holding with the repayment of that sum<sup>7</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Agricultural Holdings Act 1986 s 85(3)(a).



5 As to the Secretary of State and the Welsh Ministers see PARA 643.

6 Agricultural Holdings Act 1986 s 85(3)(b).

7 Agricultural Holdings Act 1986 s 86(3).

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#### **477. Landlord's charge for repayment.**

Where a landlord<sup>1</sup> of an agricultural holding<sup>2</sup> governed by the Agricultural Holdings Act 1986 has paid to the tenant<sup>3</sup> the amount due to him, whether under the Agricultural Holdings Act 1986, custom, agreement or otherwise, in respect of compensation for an improvement<sup>4</sup> or for specified tenant right matters<sup>5</sup> or for disturbance<sup>6</sup>, or where the landlord has defrayed the costs of executing a long term improvement<sup>7</sup>, having elected to do so<sup>8</sup> following a tenant's application to the agricultural land tribunal<sup>9</sup> for approval<sup>10</sup>, he may obtain an order from the Secretary of State or the Welsh Ministers<sup>11</sup> charging the holding or any part of it with repayment of the amount of compensation or cost<sup>12</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Ie an improvement falling within the Agricultural Holdings Act 1986 s 64(1) (see PARAS 431-432) or Sch 9 Pt I para 1 (see PARA 425).

5 Ie the matters specified in the Agricultural Holdings Act 1986 Sch 8 paras 7-11 (see PARA 433).

6 Agricultural Holdings Act 1986 s 86(1)(a).

7 Ie of a kind specified in the Agricultural Holdings Act 1986 Sch 7 paras 9-28 (see PARA 432).

8 Ie under the Agricultural Holdings Act 1986 s 67(5) (see PARA 439).

9 As to agricultural land tribunals see PARAS 670-673.

10 Agricultural Holdings Act 1986 s 86(1)(b).

11 As to the Secretary of State and the Welsh Ministers see PARA 643.

12 Agricultural Holdings Act 1986 s 86(1). As to the right of a landlord entitled to receive rents and profits as trustee or otherwise to obtain a charge for sums paid to the tenant see PARA 476. As to the charging of church and charity lands see PARA 484.

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#### **478. Exclusion of liability for tenancy determination where charge made.**

Notwithstanding anything in any deed, will or other instrument to the contrary, where the estate or interest in an agricultural holding<sup>1</sup> of the landlord<sup>2</sup> is determinable or liable to forfeiture by reason of his creating or suffering any charge on it, that estate or interest will not be determined or forfeited by reason that the tenant<sup>3</sup> obtains a charge on the holding for payment of compensation due<sup>4</sup> or that the landlord obtains a charge<sup>5</sup> on the holding for the repayment of compensation paid by him to the tenant or of the cost of improvements which he has the right to carry out in place of the tenant<sup>6</sup>.

- 1 As to the meaning of 'agricultural holding' see PARA 323.
- 2 As to the meaning of 'landlord' see PARA 323 note 7.
- 3 As to the meaning of 'tenant' see PARA 323 note 5.
- 4 ie under the Agricultural Holdings Act 1986 s 85(2) (see PARA 475).
- 5 ie under the Agricultural Holdings Act 1986 s 86(1) (see PARA 477).
- 6 Agricultural Holdings Act 1986 s 87(5).

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#### **479. Matters included in charging orders.**

An order made by the Secretary of State or the Welsh Ministers<sup>1</sup> charging an agricultural holding<sup>2</sup> or part of it with payment or repayment of a sum must also charge it with payment of all costs properly incurred in obtaining the charge<sup>3</sup>. Such an order must be made in favour of the person obtaining the charge and his executors, administrators and assigns, and must make such provision for the payment of interest and for the payment of the sum charged by instalments, and contain such directions for giving effect to the charge, as the Secretary of State or the Welsh Ministers may think fit<sup>4</sup>.

- 1 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 2 As to the meaning of 'agricultural holding' see PARA 323.
- 3 Agricultural Holdings Act 1986 s 87(1).
- 4 Agricultural Holdings Act 1986 s 87(2).

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#### **480. Payment and extent of charge.**

In the case of a charge in favour of the landlord<sup>1</sup>, where he is not the absolute owner for his own benefit, no instalment or interest may be made payable after the time when the improvement will, in the opinion of the Secretary of State or the Welsh Ministers<sup>2</sup>, have become exhausted<sup>3</sup>. A charge for the repayment of compensation paid by him to the tenant<sup>4</sup>, or for the cost of improvements which he has the right to carry out in place of the tenant<sup>5</sup>, will bind not only the landlord, but all successors in title; however, if the landlord himself has a leasehold interest, the charge will not extend beyond the interest of the landlord, his executors, administrators and assigns<sup>6</sup>.

- 1 As to the meaning of 'landlord' see PARA 323 note 7.
- 2 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 3 Agricultural Holdings Act 1986 s 87(4).
- 4 As to the meaning of 'tenant' see PARA 323 note 5.
- 5 Ie under the Agricultural Holdings Act 1986 s 86 (see PARAS 476-477).
- 6 Agricultural Holdings Act 1986 s 87(3).

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#### **481. Registration and priority of charges.**

A charge made by the Secretary of State or the Welsh Ministers<sup>1</sup> under the enforcement provisions of the Agricultural Holdings Act 1986<sup>2</sup> is registrable<sup>3</sup>. If not registered before the completion of a purchase it will be void against a purchaser for value of the land charged<sup>4</sup>. A tenant's<sup>5</sup> charge for compensation due from the landlord<sup>6</sup>, a tenant's charge in respect of sums agreed or awarded to be paid where the landlord receives the rent and profits otherwise than for his own benefit<sup>7</sup>, and an occupier's charge for compensation or for costs connected therewith where the contract of tenancy is not binding on the mortgagee<sup>8</sup>, rank in priority to any other charge however and whenever created or arising, and, as between themselves, rank in the order of their creation and not in the order of their registration under the Land Charges Act 1972<sup>9</sup>. These provisions bind the Crown<sup>10</sup>.

- 1 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 2 Ie the Agricultural Holdings Act 1986 ss 85, 86 (see PARAS 474-477).
- 3 In the case of unregistered land it is registrable as a land charge Class A: Land Charges Act 1972 s 2(1), (2) (b), Sch 2 paras 1(g), (i), 3 (amended by the Agricultural Holdings Act 1986 Sch 14 para 51, Sch 15 Pt I). See **LAND CHARGES** vol 26 (2004 Reissue) PARA 624. As to registration of a land charge in the case of registered land see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 943 et seq.
- 4 Land Charges Act 1972 s 4(2).
- 5 As to the meaning of 'tenant' see PARA 323 note 5.
- 6 Ie a charge under the Agricultural Holdings Act 1986 s 85(2) (see PARA 475). As to the meaning of 'landlord' see PARA 323 note 7.
- 7 Ie a charge under the Agricultural Holdings Act 1986 s 85(3) (see PARA 476).

8 le under the Agricultural Holdings Act 1948 ss 66, 74 (repealed).

9 Agricultural Holdings Act 1986 s 87(6).

10 Agricultural Holdings Act 1986 s 87(8).

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## **482. Assignment of charge.**

Any company incorporated by Parliament, and having power to advance money for the improvement of land<sup>1</sup>, may take an assignment of any charge obtained by a tenant<sup>2</sup> for compensation due from his landlord<sup>3</sup> or by a landlord for compensation paid or expenses in executing improvements<sup>4</sup>, upon any terms that may be agreed between the parties, and may also assign any charge so acquired by it<sup>5</sup>.

1 See PARA 616 et seq.

2 As to the meaning of 'tenant' see PARA 323 note 5.

3 le a charge under the Agricultural Holdings Act 1986 s 85(2) (see PARA 475). As to the meaning of 'landlord' see PARA 323 note 7.

4 le under the Agricultural Holdings Act 1986 s 86(1) (see PARA 477).

5 Agricultural Holdings Act 1986 s 87(7).

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## **(x) Special Categories of Land or Landlord**

### **483. Crown and Duchy land.**

With one exception<sup>1</sup>, the Agricultural Holdings Act 1986 applies to land belonging to the Crown<sup>2</sup> and the Duchies of Lancaster and Cornwall<sup>3</sup> and also to land where the landlord<sup>4</sup> or tenant<sup>5</sup> is a government department holding on behalf of the Crown, subject to such modifications as may be prescribed<sup>6</sup>.

Compensation payable by the Chancellor of the Duchy of Lancaster for long term improvements<sup>7</sup> must be raised and paid as an expense incurred in improvement of land belonging to Her Majesty in right of the Duchy<sup>8</sup>, whereas additional compensation for disturbance<sup>9</sup> or compensation on termination of a tenancy<sup>10</sup> through early resumption<sup>11</sup> may be so paid<sup>12</sup>. Compensation payable for short term improvements and tenant right matters<sup>13</sup> must be paid out of the annual revenues of the Duchy. Special provisions also apply in relation to compensation payable by the Duke of Cornwall or other possessor for the time being of the Duchy of Cornwall. Compensation for long term improvements must, and additional

compensation for disturbance and compensation on termination through early resumption<sup>14</sup> may, be paid and advances made for this purpose, subject to the provisions<sup>15</sup> with respect to land improvement in the Duchy of Cornwall<sup>16</sup>.

- 1    Ie the Agricultural Holdings Act 1986 s 11 (see PARA 337) which relates to the provision of fixed equipment necessary to comply with statutory requirements.
- 2    As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq.
- 3    As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353. As to officers who represent the Crown or the Duchy as landlords see the Agricultural Holdings Act 1986 s 95(2).
- 4    As to the meaning of 'landlord' see PARA 323 note 7.
- 5    As to the meaning of 'tenant' see PARA 323 note 5.
- 6    Agricultural Holdings Act 1986 s 95(1), (3). Modifications may be prescribed by regulations. At the date at which this volume states the law no modifications had been prescribed. As to the making of regulations generally see PARA 332 note 5.
- 7    Ie relevant improvements specified in the Agricultural Holdings Act 1986 Sch 7 (see PARA 432), improvements falling within Sch 9 Pt I para 1 (see PARA 425) and improvements specified in Sch 10 (see PARA 464): s 95(7).
- 8    Ie within the Duchy of Lancaster Act 1817 s 25.
- 9    Ie under the Agricultural Holdings Act 1986 s 60(2)(b) (see PARA 448).
- 10   As to the termination of an agricultural tenancy see PARA 328 note 1.
- 11   Ie under the Agricultural Holdings Act 1986 s 62 (see PARA 454).
- 12   Agricultural Holdings Act 1986 s 95(4).
- 13   Ie relevant improvements specified in the Agricultural Holdings Act 1986 Sch 8 paras 1-6 (see PARA 432) and such matters as are specified in Sch 8 paras 7-11 (see PARA 433): s 95(7).
- 14   See the text and notes 10, 11.
- 15   Ie the Duchy of Cornwall Management Act 1863 s 8.
- 16   Agricultural Holdings Act 1986 s 95(5). This is without prejudice to the operation of the Duchy of Cornwall Management Act 1982: Agricultural Holdings Act 1986 s 95(6).

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#### **484. Church and charity land.**

The rights of a landlord<sup>1</sup> of an agricultural holding<sup>2</sup> to obtain an order charging land<sup>3</sup> may not be exercised by trustees for ecclesiastical or charitable purposes except with the approval in writing of the Charity Commission<sup>4</sup>.

- 1    As to the meaning of 'landlord' see PARA 323 note 7.
- 2    As to the meaning of 'agricultural holding' see PARA 323.

3 See PARA 477.

4 Agricultural Holdings Act 1986 s 86(4) (amended by the Charities Act 2006 Sch 8 para 79).

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#### **485. Landlord with limited interest.**

The landlord<sup>1</sup> of an agricultural holding<sup>2</sup> may give any consent or enter into any agreement which he could have done as a freeholder, or, where his interest is an interest in a leasehold, as if he were entitled to the leasehold, even though he has a more limited interest in the land<sup>3</sup>.

Specified improvements<sup>4</sup> are deemed to be improvements authorised by the Settled Land Act 1925<sup>5</sup>, and where capital money is applied for such improvements, the money so expended will not have to be repaid out of income<sup>6</sup>.

Capital money may also be applied in some circumstances for repairs of fixed equipment without the need to repay out of income where the trustees are satisfied, after taking professional advice, that there is a legal obligation to carry out the works and that they are properly executed at a reasonable cost<sup>7</sup>. The tenant for life cannot be repaid out of capital money sums paid to tenants of agricultural holdings upon the termination of their tenancies<sup>8</sup>. The tenant for life can obtain a charge for compensation paid by him to the tenant<sup>9</sup> of an agricultural holding for improvements, tenant right or disturbance<sup>10</sup>.

Whether a charge obtained by a landlord<sup>11</sup> may be redeemed or discharged out of capital money will depend upon whether it comes within the relevant provisions of the Settled Land Act 1925: it must be an improvement created on a holding under the Agricultural Holdings Act 1986 or any similar previous enactment<sup>12</sup>. The word 'improvement' would cover long term and short term improvements begun on or after 1 March 1948<sup>13</sup> for which compensation is payable<sup>14</sup>, and market garden improvements<sup>15</sup>, but not tenant right matters<sup>16</sup> or disturbance<sup>17</sup>.

1 As to the meaning of 'landlord' see PARA 323 note 7.

2 As to the meaning of 'agricultural holding' see PARA 323.

3 Agricultural Holdings Act 1986 s 88.

4 ie long term improvements begun on or after 1 March 1948 for which compensation is payable (see the Agricultural Holdings Act 1986 Sch 7; and PARA 432).

5 ie authorised by the Settled Land Act 1925 Sch 3 Pt I (see **SETTLEMENTS** vol 42 (Reissue) PARA 816).

6 Agricultural Holdings Act 1986 s 89(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); Settled Land Act 1925 s 73(1)(iv) (amended by the Agricultural Holdings Act 1986 Sch 14 para 11).

7 *Re Duke of Northumberland, Halifax v Northumberland* [1951] Ch 202, [1950] 2 All ER 1181; *Re Sutherland's Settlement Trusts* [1953] Ch 792, [1953] 2 All ER 27; *Re Lord Brougham and Vaux's Settled Estates* [1954] Ch 24, [1953] 2 All ER 655; *Re Wynn, Public Trustee v Newborough* [1955] 2 All ER 865, [1955] 1 WLR 940; *Re Boston's Will Trusts, Inglis v Boston* [1956] Ch 395, [1956] 1 All ER 593; *Re Pelly, Ransome v Pelly* [1957] Ch 1, [1956] 2 All ER 326, CA.

8 *Re Duke of Wellington's Parliamentary Estates* [1972] Ch 374, [1971] 2 All ER 1140.

9 As to the meaning of 'tenant' see PARA 323 note 5.

10 See the Agricultural Holdings Act 1986 s 83; and PARAS 469-472. See also *Re Duke of Wellington's Parliamentary Estates* [1972] Ch 374, [1971] 2 All ER 1140.

11 See PARA 475.

12 Settled Land Act 1925 s 73(1)(ii) (amended by the Finance Act 1963 Sch 11 Pt VI; and the Agricultural Holdings Act 1986 Sch 14 para 11).

13 The date mentioned in the text is the date on which the Agriculture Act 1947 Pt III (repealed), from which these provisions are derived, was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.

14 Ie improvements specified in the Agricultural Holdings Act 1986 Sch 7, Sch 8 paras 1-6 (see PARA 432).

15 Ie the improvements specified in the Agricultural Holdings Act 1986 Sch 10 (see PARA 464 note 16). As to the meaning of 'market garden' see PARA 324 note 4.

16 Ie the matters specified in the Agricultural Holdings Act 1986 Sch 8 paras 7-11 (see PARA 433).

17 See PARA 447.

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#### **486. Leases required to be at best rent.**

Limited owners, such as a tenant for life, are sometimes required by an Act<sup>1</sup>, deed or other instrument authorising a tenancy to be made, to ensure that they obtain the best rent. In the case of an agricultural holding<sup>2</sup> let under the provisions of the Agricultural Holdings Act 1986, in establishing rent, or a reservation in the nature of a rent, it is not necessary to take into account against the tenant<sup>3</sup> any increase in the value of the holding arising from any improvements made or paid for by him<sup>4</sup>.

1 See eg the Settled Land Act 1925 s 42 (leases by tenant for life: see **SETTLEMENTS** vol 42 (Reissue) PARA 839).

2 As to the meaning of 'agricultural holding' see PARA 323.

3 As to the meaning of 'tenant' see PARA 323 note 5.

4 Agricultural Holdings Act 1986 s 90.

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#### **487. Mortgagor landlord.**

A mortgagor in possession may grant agricultural or occupation leases for any term not exceeding 50 years subject to any contrary intention expressed in the mortgage deed or by a separate document in writing<sup>1</sup>. However, any power to grant such leases cannot be excluded or restricted in any mortgage of agricultural land made after 1 March 1948<sup>2</sup> but before 1

September 1995<sup>3</sup> nor where a mortgage is made on or after 1 September 1995 but<sup>4</sup> the lease is governed by the Agricultural Holdings Act 1986<sup>5</sup>.

- 1 See the Law of Property Act 1925 s 99(1), (13); and **MORTGAGE** vol 77 (2010) PARA 345 et seq.
- 2 Ie the date on which the Agriculture Act 1947 Pt III (repealed) was brought into force: see s 111(2) (repealed); and the Agriculture Act 1947 (Commencement) (No 1) Order 1948, SI 1948/342.
- 3 Ie the date on which the Agricultural Tenancies Act 1995 was brought into force: see s 41(2); and PARA 301.
- 4 Ie by virtue of the Agricultural Tenancies Act 1995 s 4 (see PARAS 321-322).
- 5 See the Law of Property Act 1925 s 99(13A); and **MORTGAGE** vol 77 (2010) PARA 347.

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### **(3) SMALLHOLDINGS**

#### **(i) Introduction**

#### **488. Meaning of 'smallholding'.**

In general terms a 'smallholding' may be said to be a unit of land let by a smallholdings authority<sup>1</sup>, the Secretary of State or the Welsh Ministers<sup>2</sup> as a smallholding for cultivation by the occupier, with or without limited additional help. There is no definition of 'smallholding' in the Agriculture Act 1970, which reorganised the smallholdings system, but for the purposes of the Small Holdings and Allotments Acts 1908 to 1931<sup>3</sup> 'small holding'<sup>4</sup> means an agricultural holding which exceeds 1 acre and either does not exceed 50 acres or, if exceeding 50 acres, is at the date of sale or letting of an annual value for income tax purposes not exceeding £100<sup>5</sup>.

For the purposes of the repealed smallholdings provisions of the Agriculture Act 1947<sup>6</sup> 'smallholding' meant a holding, other than a holding provided, or such as apart from that Act could be provided, under any enactment relating to the provision of cottage holdings<sup>7</sup>, used or intended to be used for agriculture<sup>8</sup>, being a holding exceeding 1 acre but not exceeding 50 acres<sup>9</sup>. As originally enacted this provision extended to include holdings of between 50 and 75 acres of which the annual full fair rent<sup>10</sup> did not exceed £150<sup>11</sup>.

Useful reference may also be made to the statutory provisions setting out the powers of smallholdings authorities. These provide for the letting of holdings which are capable, when farmed under reasonably skilled management, of providing full-time employment for not more than two persons with or without additional part-time employment for another person<sup>12</sup>, and such holdings may accordingly be considered 'smallholdings' for these purposes. In the principal statutory provisions relating to smallholdings, now embodied in the Agriculture Act 1970 Part III<sup>13</sup>, 'existing smallholding' means a unit of land which, being held for the purposes of smallholdings<sup>14</sup> by a smallholdings authority<sup>15</sup> (or, as the case may be, by the Secretary of State or the Welsh Ministers<sup>16</sup>), is for the time being let as a smallholding<sup>17</sup> or, if it is not for the time being in use, was so let when it was last in use<sup>18</sup>.

- 1 As to smallholdings authorities see PARAS 650-653.
- 2 As to the Secretary of State and the Welsh Ministers see PARA 643.



3     le in effect the Small Holdings and Allotments Act 1908, the Land Settlement (Facilities) Act 1919, the Small Holdings and Allotments Act 1926 and the Agricultural Land (Utilisation) Act 1931 Pt II (ss 12, 17, 20): Land Settlement (Facilities) Act 1919 s 34; Small Holdings and Allotments Act 1926 s 23(1); Agricultural Land (Utilisation) Act 1931 s 25(1). These Acts replaced various earlier Acts, but the position as regards smallholdings sold and leased under repealed Acts was preserved by the Small Holdings and Allotments Act 1908 s 62 (repealed), the Land Settlement (Facilities) Act 1919 s 32(2), and the Small Holdings and Allotments Act 1926 s 15 (repealed in relation to smallholdings). The provisions of these Acts relating to smallholdings were almost wholly repealed, subject to savings, by the Agriculture Act 1947 Sch 8 Pt II, and subsequent amendments were made to the surviving provisions by the Agriculture Act 1970 Sch 4.

4     Note that in the Small Holdings and Allotments Acts 1908 to 1931 'small holding' was spelt as two words, but there is no material difference between that usage and the modern expression 'smallholding'.

5     Small Holdings and Allotments Act 1908 s 61(1) (amended by the Small Holdings and Allotments Act 1926 s 16).

6     le the Agriculture Act 1947 Pt IV (ss 47-67), largely repealed by the Agriculture Act 1970 (see Sch 5 Pt III) and replaced by the Agriculture Act 1970 Pt III (ss 37-65).

7     As to cottage holdings see PARAS 591-601.

8     As to the meaning of 'agriculture' for the purposes of the Agriculture Act 1947 see PARA 324.

9     See the Agriculture Act 1947 s 66 (repealed); and the Agriculture (Miscellaneous Provisions) Act 1954 s 3(1), Sch 3 (repealed).

10    le such rent as a tenant might reasonably be expected to pay for the holding if let as such on the terms, other than the terms as to rent, on which it was in fact let: Agriculture Act 1947 s 52(2) (repealed).

11    This extended meaning operated until 4 June 1954 (ie the date on which the Agriculture (Miscellaneous Provisions) Act 1954 was passed), but any holding used or intended to be used for agriculture which before that date was provided as a smallholding for the purposes of the Small Holdings and Allotments Acts 1908 to 1931, or the Agriculture Act 1947 Pt IV, and any holding provided by virtue of the Agriculture (Miscellaneous Provisions) Act 1954 s 3(2) (repealed), was to be treated as a smallholding for the purposes of the Agriculture Act 1947 Pt IV: Agriculture (Miscellaneous Provisions) Act 1954 s 3(1) (repealed).

12    See the Agriculture Act 1970 s 39; and PARAS 494-495.

13    le the Agriculture Act 1970 Pt III (ss 37-65).

14    'The purposes of smallholdings' includes the purposes which were the purposes of smallholdings in accordance with the Agriculture Act 1947 Pt IV: Agriculture Act 1970 s 37(2)(c). Under the Agriculture Act 1947 it was the duty of specified local authorities to provide smallholdings for the purpose of affording to persons with agricultural experience an opportunity of becoming farmers on their own account: s 47(1) (repealed).

15    Any reference in the Agriculture Act 1970 Pt III to land held by a smallholdings authority for the purposes of smallholdings is construed as including a reference to any land in which an interest is so held by the authority, other than a right to take possession arising under the Small Holdings and Allotments Acts 1908 to 1931: Agriculture Act 1970 s 37(2)(a).

16    As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646.

17    le let under the Agriculture Act 1970 or under the previous enactments relating to smallholdings (as to which see note 3).

18    Agriculture Act 1970 s 37(1).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **489. The smallholdings system.**

Smallholdings, unlimited in size but, if above 50 acres, limited in value, could be provided under the Small Holdings and Allotments Acts 1908 to 1931<sup>1</sup>, by specified local authorities for persons desiring to buy or lease them and able themselves to cultivate them properly<sup>2</sup>, the primary aim being to relieve unemployment and assist re-settling ex-servicemen.

The Agriculture Act 1947 repealed the smallholdings provisions of the earlier Acts and introduced a new smallholdings code<sup>3</sup>, whereby specified local authorities were under a duty to provide smallholdings, limited in size, to persons with agricultural experience seeking the opportunity of becoming farmers on their own account, to the extent that a demand existed for smallholdings, suitable land could be obtained for the purpose, and the smallholdings could be provided without detriment to the general interests of agriculture<sup>4</sup>.

Provision was made by the Agriculture Act 1970, which repealed most of the relevant provisions of the Agriculture Act 1947, for the reorganisation of smallholdings authorities<sup>5</sup> smallholdings estates<sup>6</sup>, having regard to the general interests of agriculture and of good estate management, with a view to providing opportunities for persons to be farmers on their own account by letting holdings to persons qualified, or likely shortly to become qualified, by reason of agricultural experience, to farm them on their own account<sup>7</sup>, and a new smallholdings code<sup>8</sup> was introduced.

1 As to the Small Holdings and Allotments Acts 1908 to 1931 see PARA 488 note 3.

2 See the Small Holdings and Allotments Act 1926 s 1 (repealed). For a history of smallholdings legislation see the Northfield Committee of Inquiry into the Acquisition and Occupancy of Agricultural Land (1979) (Cmnd 7599).

3 See the Agriculture Act 1947 Pt IV (ss 47-67) (largely repealed).

4 See the Agriculture Act 1947 s 47 (repealed).

5 As to smallholdings authorities see PARAS 650-653.

6 See the Agriculture Act 1970 ss 40-43; and PARAS 501-504.

7 See the Agriculture Act 1970 ss 39, 44; and PARAS 492, 495-496, 650.

8 See the Agriculture Act 1970 Pt III (ss 37-65); and PARA 490 et seq.

#### **UPDATE**

#### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **(ii) Provision of Land**

### **A. ACQUISITION, APPROPRIATION AND DISPOSAL**

#### **490. Acquisition of land for smallholdings.**

A smallholdings authority<sup>1</sup> cannot acquire land compulsorily for the purposes of smallholdings<sup>2</sup>, but is empowered to acquire land by agreement<sup>3</sup>. The Secretary of State and the Welsh Ministers<sup>4</sup> may acquire by agreement any land which in his or their opinion is required for the purposes of smallholdings<sup>5</sup>, and may designate any land vested in them as being land held for those purposes<sup>6</sup>.

A smallholdings authority, the Secretary of State or the Welsh Ministers may take on lease for the purposes of smallholdings, for a term not exceeding 35 years and with or without a right of renewal for a further similar term, land forming part of the possessions of the Duchy of Cornwall<sup>7</sup>, certain glebe land<sup>8</sup>, and any other land in relation to which a statutory power to lease land for agricultural purposes for a specified maximum term may be exercised<sup>9</sup>.

<sup>1</sup> As to smallholdings authorities see PARAS 650-653.

<sup>2</sup> Agriculture Act 1970 s 48(2). As to the purposes of smallholdings see PARA 488 note 14. As to the meaning of 'smallholding' see PARA 488. An authority was formerly able to acquire land by compulsory hiring or purchase but the relevant statutory provision (the Agriculture Act 1947 s 48(1)) has been repealed.

<sup>3</sup> See the Local Government Act 1972 ss 120, 124; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 509, 516. Where an authority proposes, in the exercise of its power to acquire land by agreement, to acquire land outside its area for the purposes of smallholdings, it must consult the council of the county or (in Wales) county or county borough in whose area the land is situated: Agriculture Act 1970 s 48(1) (amended by the Local Government Act 1972 s 272(1), Sch 30; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 38(2)). As to the counties and county boroughs and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 24 et seq, 37 et seq. Where an authority proposes to acquire land by agreement the acquisition is governed by the Compulsory Purchase Act 1965 Pt I (ss 1-32) (see **COMPULSORY ACQUISITION OF LAND**): Local Government Act 1972 s 120(3).

<sup>4</sup> As to the Secretary of State and the Welsh Ministers see PARA 643.

<sup>5</sup> Agriculture Act 1970 s 55. This is an application of the general power under the Agriculture Act 1947 s 82 to acquire land by agreement (as to which see PARA 644).

<sup>6</sup> Agriculture Act 1970 s 54(7).

<sup>7</sup> Agriculture Act 1970 s 61(1), (2)(b). As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

8 See the Agriculture Act 1970 s 61(3) (prospectively amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 17).

9 See the Agriculture Act 1970 s 61(6).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **491. Appropriation or disposal of surplus land held for smallholdings purposes.**

Smallholdings authorities<sup>1</sup> may appropriate for some other approved purpose, or may dispose of, smallholdings<sup>2</sup> land belonging to them and not required for the purposes of smallholdings<sup>3</sup>. An authority, the Secretary of State and the Welsh Ministers<sup>4</sup> may also let land<sup>5</sup> held by them the purposes of smallholdings<sup>6</sup> which is not for the time being required for use for those purposes, for such period and for such purpose as they think fit, at the best rent which appears to be obtainable for the land for that purpose, and on such other terms as they may determine<sup>7</sup>. Smallholdings authorities may let land acquired or appropriated for smallholdings<sup>8</sup> for cultivation<sup>9</sup> as an allotment<sup>10</sup>, although this does not authorise a council to let any land held by it under a contract of tenancy or the use of any land so held in contravention of any term or condition of the contract<sup>11</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the meaning of 'smallholding' see PARA 488.

3 See the Local Government Act 1972 ss 122, 123, 126, 127 (all as amended); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 515, 518, 520. As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15.

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 For this purpose 'letting land' includes granting (in the case of a smallholdings authority, with the approval of the Secretary of State and the Welsh Ministers), a licence to a person to occupy the land for use as agricultural land, and granting a licence to a person to occupy the land where it is to be used only for grazing or mowing during a specified part of the year: Agriculture Act 1970 ss 49(2), 54(1), (2). As to 'agricultural land' and the 'occupier' of land for this purpose see PARA 324. Any letting in pursuance of this power made after 1 September 1995 will be a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995: see s 4; and PARA 301 et seq.

6 As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646.

7 Agriculture Act 1970 s 49(1). In relation to a smallholdings authority this power is without prejudice to its general power to appropriate or dispose of smallholdings land (see the text and notes 1-3) (s 49(4)), but the general power of an authority to let land does not enable it to let land for the time being held by it for the purposes of smallholdings otherwise than in accordance with s 49(1) or in accordance with the specific provisions as to the letting of smallholdings (ie the Agriculture Act 1970 s 44 (PARA 492) (s 49(3))).

As to the appropriation or disposal of land acquired or appropriated for planning purposes see the Town and Country Planning Act 1990 ss 232, 233; and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 945 et seq.

8 As to the acquisition of land for smallholdings see PARA 490.

9 As to the meaning of 'cultivation' for these purposes see PARA 324 note 5.

10 As to allotments see PARAS 510-590.

11 Allotments Act 1922 s 15.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **B. LETTING AS A SMALLHOLDING**

### **492. General provisions as to smallholdings lettings.**

Any land held for the purposes of smallholdings by a smallholdings authority, the Secretary of State or the Welsh Ministers may be let by that body as a smallholding<sup>1</sup>. No such landholder may, however, let a holding resulting from an enlargement or amalgamation of existing smallholdings<sup>2</sup> or create any new smallholding where the enlargement, amalgamation or creation is not in accordance with approved reorganisation proposals<sup>3</sup> for the time being in force<sup>4</sup>, unless the letting or creation is effected with the written consent of the Secretary of State or the Welsh Ministers (or their statutory predecessors) given before reorganisation proposals<sup>5</sup> have been submitted or before proposals so submitted have been approved<sup>6</sup>.

1 Agriculture Act 1970 ss 44(1), 54(1), (2). As to the meaning of 'smallholding' see PARA 488. As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15. As to smallholdings authorities see PARAS 650-653. As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646. As to the Secretary of State and the Welsh Ministers see PARA 643.

For the persons to whom the land may be let see PARA 496.

2 Ie under the Agriculture Act 1970 s 40(2)(a); see PARA 501. As to the meaning of 'existing smallholding' see PARA 488.

- 3 le under the Agriculture Act 1970 ss 40-43; see PARAS 501-504.
- 4 Agriculture Act 1970 s 44(4).
- 5 le under the Agriculture Act 1970 s 40, s 42 or s 43; see PARAS 501-504.
- 6 Agriculture Act 1970 s 44(4).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **493. Advertisement of vacant smallholdings.**

Every smallholdings authority<sup>1</sup>, the Secretary of State and the Welsh Ministers<sup>2</sup> must, once in any year<sup>3</sup> during which any smallholding<sup>4</sup> on a smallholdings estate<sup>5</sup> becomes available for letting<sup>6</sup>, cause a notice to be published<sup>7</sup> stating that they provide smallholdings for letting, describing the location and types of smallholdings on the estate or available for letting, and setting out the requirements to be fulfilled by tenants<sup>8</sup>.

- 1 As to smallholdings authorities see PARAS 650-653.
- 2 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 3 'Year' means a 12 month period ending on 31 March: Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 4(2).
- 4 As to the meaning of 'smallholding' see PARA 488.
- 5 'Smallholdings estate', in relation to anything falling to be done by a smallholdings authority, means the aggregate of the land which is for the time being held by the authority for the purposes of smallholdings: Agriculture Act 1970 s 37(1). As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15.
- 6 le under the Agriculture Act 1970 s 44 (see PARA 492).
- 7 In the context of smallholdings being made available for lettings by smallholdings authorities such a notice must be caused to be published in at least one newspaper circulating substantially outside the authority's area: Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 4(1). No specific provision is made as to the publications in which the Secretary of State and the Welsh Ministers are required to publish such notices.
- 8 Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 4(1). As to the selection of tenants see PARA 496.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **494. Extent of smallholdings.**

Holdings let by smallholdings authorities<sup>1</sup> must either fall within what is known as the upper limit for a smallholding<sup>2</sup>, or must be let in accordance with the authority's reorganisation proposals<sup>3</sup>, approved by the Secretary of State or the Welsh Ministers<sup>4</sup>, notwithstanding that it appears to the Secretary of State or the Welsh Ministers that in the case of one or more holdings the upper limit would be exceeded, if it is represented by the authority, and the Secretary of State or the Welsh Ministers is or are satisfied, that the holdings are to be let as smallholdings<sup>5</sup> and that, by reason of the nature or extent of fixed equipment<sup>6</sup> on the holding or holdings, or of the special qualities of the soil, or other exceptional circumstances, it is necessary or expedient for them to exceed that limit<sup>7</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the upper limit for a smallholding see PARA 495. As to the meaning of 'smallholding' see PARA 488.

3 Ie under the Agriculture Act 1970 s 41 (see PARA 501).

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 Ie under the Agriculture Act 1970 s 44 (see PARA 492).

6 'Fixed equipment' includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and references to fixed equipment on land are construed accordingly: Agriculture Act 1947 s 109(3); Agriculture Act 1970 s 37(4).

7 Agriculture Act 1970 ss 39(1), 41(4).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **495. The upper limit for a smallholding.**

A holding is treated as falling within the upper limit for a smallholding<sup>1</sup> if in the opinion of the Secretary of State or the Welsh Ministers<sup>2</sup> it is capable, when farmed<sup>3</sup> under reasonably skilled management, of providing full-time employment for not more than two persons, including the tenant, with or without additional part-time employment for another person<sup>4</sup>. The holding is treated as being so capable if its standard labour requirements are less than 900 standard person-days in aggregate in a year on average<sup>5</sup>. In any other case the holding is treated as exceeding the upper limit for a smallholding<sup>6</sup>.

In estimating the number of persons for whom a holding is capable of providing full-time employment it must be assumed that the system of husbandry suitable for the district is followed, and that the greater part of the feeding stuffs required by any livestock<sup>7</sup> kept on the holding is grown there<sup>8</sup>. In the case of an existing smallholding<sup>9</sup> the number of standard man-days is estimated by multiplying a prescribed number<sup>10</sup> per hectare, based on the type of crop<sup>11</sup>, or a prescribed number<sup>12</sup> per head, based on the type of livestock<sup>13</sup>, by the number of hectares or average number of head of livestock shown to the satisfaction of the Secretary of State or the Welsh Ministers to be comprised in the agricultural operations carried on on the holding in an average year, adding the crop and livestock results together, and increasing the total by 15 per cent<sup>14</sup>. In the case of a proposed smallholding<sup>15</sup> the number of standard man-days is estimated by making a similar calculation in respect of the hectareage and average number of head of livestock shown to the satisfaction of the Secretary of State or the Welsh Ministers to be capable of being comprised in the agricultural operations carried on on the holding when farmed under reasonably skilled management<sup>16</sup>.

1 As to the meaning of 'smallholding' see PARA 488.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 As to the farming of land see PARA 324.

4 Agriculture Act 1970 s 39(2).

5 Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, reg 3(2).

6 Agriculture Act 1970 s 39(2).

7 As to the meaning of 'livestock' see PARA 324 note 2.

8 Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, reg 3(1).

9 In this context 'existing smallholding' means a holding held by a smallholdings authority for the purposes of smallholdings and let as a smallholding at a time when the authority submits proposals to the Secretary of State or the Welsh Ministers under the Agriculture Act 1970 s 40, s 42 or s 43, in which that holding is included (see PARAS 501-504), or, if the holding is not at that time let as a smallholding and is not being used for any purpose, is a holding which, when last let, was let as a smallholding: Smallholdings (Full-Time Employment)



Regulations 1970, SI 1970/1050, Schedule. As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15.

10 See the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule, Table (amended by SI 1992/2816).

11 Where double cropping is practised the area of both crops is included: Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule para 3.

12 See the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule, Table.

13 Baby animals are not counted: see the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule para 6.

14 Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule para 1.

15 'Proposed smallholding' means a holding which a smallholdings authority, in any proposals of the kind referred to in note 9 submitted by it to the Secretary of State or the Welsh Ministers, proposes to form by enlarging or amalgamating existing smallholdings or by creating new smallholdings: Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule.

16 Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, Schedule para 2.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **496. Selection of smallholdings tenants.**

A smallholdings authority<sup>1</sup>, the Secretary of State and the Welsh Ministers<sup>2</sup> may not let land as a smallholding<sup>3</sup> except to a person who is to farm<sup>4</sup> the holding and who either is regarded by the authority as being qualified by reason of his agricultural<sup>5</sup> experience to farm the holding on his own account or is a person in respect of whom it is satisfied that within a reasonably short time he will become eligible to be so regarded<sup>6</sup>. Notwithstanding this, a smallholdings authority, the Secretary of State or the Welsh Ministers may let land as a smallholding, or as part of a group of two or more smallholdings, to two or more persons proposing to farm the land together on a co-operative system if, having regard to their aggregate agricultural experience, the authority, the Secretary of State or the Welsh Ministers is or are satisfied that they are, or will within a reasonably short time become, qualified to farm the land together on such a system on their own account<sup>7</sup>.

The Secretary of State and the Welsh Ministers may by regulations make provision as to the selection of tenants to whom land may be let for smallholdings<sup>8</sup>. In pursuance of this power it has been provided that no person may be selected as a tenant to whom a smallholding may be

let unless he shows to the satisfaction of the smallholdings authority, the Secretary of State or the Welsh Ministers that for a period of not less than five years (whether continuous or not)<sup>9</sup> he has been occupied in full-time practical farm work<sup>10</sup>. Where a smallholdings authority, the Secretary of State or the Welsh Ministers intends or intend to re-let a smallholding after the death of a tenant, it, him or they must first consider applications from specified close relations of the deceased<sup>11</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 As to the meaning of 'smallholding' see PARA 488.

4 As to the farming of land see PARA 324.

5 As to the meaning of 'agricultural' see PARA 324.

6 Agriculture Act 1970 ss 44(2), 54(1), (2).

7 Agriculture Act 1970 s 44(3).

8 Agriculture Act 1970 s 44(6).

9 Any period during which a person was attending a full-time course in agriculture at a university, college or other establishment of further education is, up to a maximum of three years, deemed to be a period during which he was occupied in full-time practical farm work: Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 3(1).

10 Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 3(1). This does not apply to the surviving spouse or civil partner of a deceased tenant of a smallholding in relation to the first letting of that smallholding after the death of the tenant if he or she is residing on the smallholding when that letting is under consideration by the smallholdings authority, the Secretary of State or the Welsh Ministers: reg 3(2) (amended by SI 2005/2114).

11 Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 3(1) (reg 3(3), (4) added by SI 1976/2001). A smallholdings authority, the Secretary of State or the Welsh Ministers may not consider an application for the first letting of a smallholding after the death of the tenant by a person who is not a spouse, civil partner, brother, sister or child of the deceased tenant, or any person not being a brother, sister or child who, in case of any marriage or civil partnership to which the deceased tenant was at any time a party, was treated by the deceased tenant as a child of the family in relation to that marriage or civil partnership, unless every application from such a person has been considered and refused: Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, reg 3(3), (4) (as so added; reg 3(4) amended by SI 2005/2114).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **497. Rent for a smallholding.**

In determining the rent at which it is to let land as a smallholding<sup>1</sup>, a smallholdings authority<sup>2</sup>, the Secretary of State and the Welsh Ministers<sup>3</sup> must have regard to the rent which, in their opinion, might reasonably be expected to be determined to be the proper rent if the land were already let as an agricultural holding<sup>4</sup>, if the terms of that letting, other than the terms as to rent, were those on which the authority proposes to let the land<sup>5</sup>, and if the matter of what rent should be payable had been referred to arbitration<sup>6</sup>.

These provisions also apply<sup>7</sup> in relation to a revision by agreement of the rent at which land has been let by a smallholdings authority, the Secretary of State or the Welsh Ministers as a smallholding, including land so let under the previous enactments relating to smallholdings<sup>8</sup>.

1 As to the meaning of 'smallholding' see PARA 488.

2 As to smallholdings authorities see PARAS 650-653.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Agriculture Act 1970 ss 45(1)(a), 54(1), (2). Section 45(1)(a) refers to land let as an 'agricultural holding'. That term is used in connection with tenancies governed by the Agricultural Holdings Act 1986 (see PARA 323), but not in connection with tenancies governed by the Agricultural Tenancies Act 1995, which are known as 'farm business tenancies' (see ss 2, 4; PARA 301; and see further PARA 499); it is thought, however, that farm business tenancies should be taken to be 'agricultural holdings' for the present purposes. As to statutory rent reviews under the Agricultural Holdings Act 1986 see PARAS 338-340; and as to statutory rent reviews under the Agricultural Tenancies Act 1995 see PARAS 306-309.

5 Agriculture Act 1970 s 45(1)(b).

6 Agriculture Act 1970 s 45(1)(c). The arbitration would be under the Arbitration Act 1996 (as to which see **ARBITRATION** vol 2 (2008) PARA 1209 et seq): see the Agriculture Act 1970 s 45(1)(c); the Agricultural Holdings Act 1986 s 12; the Agricultural Tenancies Act 1995 s 10; and PARAS 307, 338. For the purposes of such arbitration it is assumed that there would be no improvements (including matters treated as equivalent to improvements), dilapidations, deterioration under the enactments relating to agricultural holdings which are for the time being in force or damage of which special account, by way of reducing or increasing the rent, would fall to be taken in determining the rent payable: Agriculture Act 1970 s 45(2). As to increases of rent for certain improvements to agricultural holdings under the Agricultural Holdings Act 1986 see s 13; and PARA 340.

7 Excluding the assumption set out in note 4.

8 Agriculture Act 1970 s 45(3). 'The previous enactments relating to smallholdings' means the Small Holdings and Allotments Acts 1908 to 1931 and the Agriculture Act 1947 Pt IV (ss 47-67) (largely repealed): Agriculture Act 1970 s 37(1).

#### **UPDATE**

#### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **498. Lettings and sales under earlier smallholdings legislation.**

Where smallholdings were sold or let before 1 October 1949<sup>1</sup> the statutory provisions then applicable as to payments for sales by terminable annuities<sup>2</sup>, as to the conditions affecting the holdings sold or let<sup>3</sup>, and as to the recovery of possession on breach of those conditions<sup>4</sup>, continue to apply subject to certain modifications<sup>5</sup>.

Any land held by a smallholdings authority immediately before 1 August 1970<sup>6</sup> for the purposes of smallholdings<sup>7</sup> continues to be held by it for those purposes, subject to any power exercisable by it by virtue of any enactment to appropriate or dispose of the land for other purposes<sup>8</sup>, and the repeal of the smallholdings provisions of earlier legislation<sup>9</sup> does not affect the validity of any letting effected before 1 August 1970<sup>10</sup>.

1    le the date on which the Agriculture Act 1947 Pt IV (ss 47-67) came into operation: Agriculture Act 1947 (Commencement) Order 1949, SI 1949/1201.

2    See the Small Holdings and Allotments Act 1926 s 5 (repealed in relation to smallholdings).

3    See the Small Holdings and Allotments Act 1926 s 6 (repealed in relation to smallholdings).

4    See the Small Holdings and Allotments Act 1926 s 7 (repealed in relation to smallholdings) (amended by the Statute Law (Repeals) Act 1993).

5    Agriculture Act 1947 s 67(2)(a), Sch 8 Pt II (Sch 8 Pt II amended by the Agriculture Act 1970 Sch 4; and the Statute Law (Repeals) Act 2004). The provisions referred to in notes 2-4 continue to apply except in so far as they provide for the sale or other disposition of smallholdings not authorised by the Agriculture Act 1970 Pt III (ss 37-65), and except in so far as the Small Holdings and Allotments Act 1926 s 6(1) renders the consent of the Secretary of State or the Welsh Ministers unnecessary where no contribution is payable by them, and the requirement of s 6(1)(c) as to good husbandry must be construed as requiring the owner or occupier to fulfil his responsibilities to farm the holding in accordance with the rules of good husbandry. As to the Secretary of State and the Welsh Ministers see PARA 643. As to the rules of good husbandry see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902-904.

6    le the date on which the Agriculture Act 1970 Pt III (ss 37-65) came into operation: Agriculture Act 1970 (Commencement No 2) Order 1970, SI 1970/1048.

7    As to smallholdings authorities see PARAS 650-653. As to land held by smallholdings authorities for the purposes of smallholdings see PARA 488 text and notes 14, 15.

8    Agriculture Act 1970 Sch 3 para 2. As to such dealings see PARA 491.

9    See the Agriculture Act 1970 Sch 5 Pt III (repealed), which repealed, inter alia, much of the Agriculture Act 1947 Pt IV (ss 47-67).

10   Agriculture Act 1970 Sch 3 para 3; Agriculture Act 1970 (Commencement No 2) Order 1970, SI 1970/1048.

#### **UPDATE**

#### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **499. Application to smallholdings of legislation relating to agricultural holdings and farm business tenancies.**

A smallholding<sup>1</sup> which comprises land which is used for agriculture<sup>2</sup> and which is so used for the purposes of trade or business, or land which is designated by the Secretary of State or the Welsh Ministers<sup>3</sup> as agricultural land for the purposes of the Agriculture Act 1947, is subject to the provisions of that Act, which are principally concerned with securing efficiencies in estate management, husbandry and production<sup>4</sup>.

A smallholding which is, or which is comprised in land the aggregate of which (whether agricultural land<sup>5</sup> or not) is, comprised in a contract of tenancy<sup>6</sup> entered into before 1 September 1995<sup>7</sup> which is a contract for an agricultural tenancy<sup>8</sup>, not being a contract under which the land is let to the tenant during his continuance in an office, appointment or employment held under the landlord, is an 'agricultural holding' for the purposes of the Agricultural Holdings Act 1986 and is accordingly subject to the provisions of that Act, which are principally concerned with the regulation of tenancy agreements concerning agricultural land<sup>9</sup>.

A smallholding which is comprised in a tenancy which begins on or after 1 September 1995 and which complies with certain conditions<sup>10</sup> will in general be subject to the provisions of the Agricultural Tenancies Act 1995 relating to farm business tenancies<sup>11</sup>.

1 As to the meaning of 'smallholding' see PARA 488.

2 As to the meaning of 'agriculture' for these purposes, and as to land being 'used' for agriculture, see PARA 324.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 See the Agriculture Act 1947 s 109(1); and PARA 324. Any land so designated which in the opinion of the Secretary of State or the Welsh Ministers ought to be brought into use for agriculture is included: see s 109(1); and PARA 324.

5 As to 'agricultural land' for these purposes see PARA 324.

6 As to a 'contract of tenancy' for these purposes see PARA 325.

7 Such a tenancy entered into on or after 1 September 1995 (ie the date on which the Agricultural Tenancies Act 1995 came into force: see s 41(2); and PARA 301) will in general be subject to the provisions of the Agricultural Tenancies Act 1995 relating to farm business tenancies (see the text and notes 11-13) and not to the provisions of the Agricultural Holdings Act 1986 concerned with the regulation of tenancy agreements concerning agricultural land: see the Agricultural Tenancies Act 1995 ss 1, 2; and PARA 301 et seq.

8 As to when a contract of tenancy is a contract for an agricultural tenancy under the Agricultural Holdings Act 1986 see s 1(2); and PARA 323.

9 See the Agricultural Holdings Act 1986 s 1(1); and PARA 323 et seq.

10 Ie the business conditions together with either the agriculture or notice conditions: see the Agricultural Tenancies Act 1995 s 1; and PARA 302.

11 See the Agricultural Tenancies Act 1995 ss 1(1), 2(1); and PARA 301 et seq. As to the tenancies beginning on or after 1 September 1995 which are not subject to the provisions relating to farm business tenancies (ie certain tenancies arising pursuant to contracts which indicated that the Agricultural Holdings Act 1986 was to apply; certain succession tenancies; tenancies granted under the Evesham custom; and certain variations of existing tenancies), and which are instead subject to the Agricultural Holdings Act 1986 (see the text and notes 4-9), see the Agricultural Tenancies Act 1995 ss 1(1)(b), 2(1)(b), 4; and PARA 301.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **500. Application to smallholdings of legislation relating to planning permission, rating and non-agricultural usage.**

Planning permission is not required for the development of smallholdings<sup>1</sup>, since cultivation of a smallholding amounts to agricultural use for the purposes of the Town and Country Planning Act 1990<sup>2</sup> and the use of land for the purposes of agriculture does not amount to development of the land for the purposes of that Act<sup>3</sup>. Hereditaments consisting of agricultural land are generally exempt from non-domestic rating<sup>4</sup>.

Smallholdings are usually let for cultivation and may have restrictions that they should not be used for any trade or business. If a smallholding is subsequently used for a trade or business which is not agriculture the letting may be governed by the provisions of the Landlord and Tenant Act 1954 relating to security of tenure for business tenants<sup>5</sup>. Protection is given to a tenant where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes; however a tenant will not be protected where the business is carried on in breach of a covenant unless the landlord has waived the breach<sup>6</sup>.

1 As to the meaning of 'smallholding' see PARA 488.

2 See PARA 324.

3 See the Town and Country Planning Act 1990 s 55(2)(e); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 223.

4 See the Local Government Finance Act 1988 Sch 5 paras 1(a), 2(1)(d); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 43-44.

5 See the Landlord and Tenant Act 1954 Pt II (ss 23-46); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 701 et seq. For the tenancies excluded from the protections of Pt II, which include tenancies of agricultural holdings subject to the provisions of the Agricultural Holdings Act 1986 and farm business tenancies subject to the Agricultural Tenancies Act 1995 (see PARA 499), see the Landlord and Tenant Act 1954 s 43; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 708.

6 See the Landlord and Tenant Act 1954 s 23(1), (4); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 706.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **C. REORGANISATION OF SMALLHOLDINGS**

### **501. Compulsory reviews of smallholdings estates.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may direct<sup>2</sup> a smallholdings authority<sup>3</sup> to carry out a review of its smallholdings estate<sup>4</sup> and to submit proposals for its future management<sup>5</sup>. Such proposals must comply with any directions of the Secretary of State or the Welsh Ministers as to form and content<sup>6</sup>, and in formulating them, the authority must, in particular, consider to what extent, if any, with a view to giving effect to the general aim of statutory smallholdings<sup>7</sup> and having regard to the general interests of agriculture<sup>8</sup> and of good estate management, that estate should be reorganised:

- 240 (1) by enlarging existing smallholdings<sup>9</sup>, or by amalgamating them or part of them with other land, with or without improvements<sup>10</sup>;
- 241 (2) by improving existing smallholdings without any enlargement or amalgamation<sup>11</sup>; or
- 242 (3) by creating new smallholdings, with or without improvements<sup>12</sup>.

Any proposals so submitted must also indicate how far the authority's previous proposals<sup>13</sup> are intended to remain unaltered and how far they are to be amended or superseded<sup>14</sup>. The Secretary of State and the Welsh Ministers may approve or reject any proposals submitted in

pursuance of these provisions<sup>15</sup>, and may also direct subsequent reviews at intervals of not less than five years after the previous proposals have been approved<sup>16</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 Any such direction must be complied with within such period as may be specified in the direction or such extended period as the Secretary of State or the Welsh Ministers may allow: Agriculture Act 1970 s 42(2).

3 As to smallholdings authorities see PARAS 650-653.

4 As to the meaning of 'smallholdings estate' see PARA 493 note 5.

5 Agriculture Act 1970 s 42(1). The power to direct the carrying out of a review may be exercised at any time after the end of five years after the approval by the Secretary of State or the Welsh Ministers of proposals for the reorganisation of a smallholdings authority's smallholdings estate under the Agriculture Act 1970 s 40, which required every smallholdings authority which immediately before 1 August 1970 held any land for the purposes of smallholdings to review its estate and submit proposals with respect to its future management (see s 40; and the Agriculture Act 1970 (Commencement No 2) Order 1970, SI 1970/1048). Such proposals were then approved or rejected as set out in PARA 502: Agriculture Act 1970 s 41(1).

A smallholdings authority could apply for an exemption from a requirement under s 40 (see s 40(4)), whereupon the authority was required to carry out a review and submit proposals within five years of said revocation; an authority whose exemption from s 40 has never been revoked can therefore not be required to carry out a review and submit proposals under s 42, since by virtue of s 42(1) the requirements of that section only operate where an authority has previously submitted proposals under s 40 (see above), but it may be required to submit proposals if it elects to make changes to its smallholdings estate (see PARA 504).

Provision is made for the payment of grants under the Agriculture Act 1967 Pt II (ss 26-40) so as to enable smallholdings authorities to give effect to proposals under the Agriculture Act 1970 ss 40-43, provided the grant was applied for before the end of 1975: see s 50 (amended by the Agriculture (Miscellaneous Provisions) Act 1972 ss 9(7), 26(3), (4), Sch 6). As to the payment of grants under the Agriculture Act 1967 Pt II see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1338-1344.

6 Agriculture Act 1970 ss 40(3), 42(3).

7 See PARA 650.

8 As to the meaning of 'agriculture' see PARA 324.

9 As to the meaning of 'existing smallholding' see PARA 488.

10 Agriculture Act 1970 s 40(2)(a). It is immaterial whether or not the other land is or forms part of an existing smallholding or is otherwise comprised in the authority's smallholdings estate: s 40(2)(a).

11 Agriculture Act 1970 s 40(2)(b).

12 Agriculture Act 1970 s 40(2)(c). References in Pt III (ss 37-65) to the creation of a new smallholding must be construed as references to any letting of land by a smallholdings authority, the Secretary of State or the Welsh Ministers where:

59 (1) the land is held for the purposes of smallholdings and the letting is a letting of the land as a smallholding (s 37(3)(a));

60 (2) immediately before the letting the land or part of it is being used (or, if not then in use, is land which was last used) otherwise than as land held and let as mentioned in head (1) (s 37(3)(b)); and

61 (3) the land so let is not a holding resulting from an enlargement or amalgamation as in the text to notes 9-11, or from a similar enlargement or amalgamation by the Secretary of State or the Welsh Ministers (s 37(3)(c)).

As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15. As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646.

13 As to the previous requirement for making proposals see note 5.

14 Agriculture Act 1970 s 42(2).



15 See PARA 502.

16 Agriculture Act 1970 s 42(4). Where different parts of proposals were approved on different dates the period of five years runs from the latest such date: s 42(7). Section 41 applies for the approval or rejection of proposals submitted following subsequent reviews: see PARA 502.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **502. Approval or rejection of proposals for smallholdings reorganisation.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may either approve proposals for the reorganisation of a smallholdings estate<sup>2</sup> submitted by a smallholdings authority<sup>3</sup>, or may reject them and direct the authority to submit new proposals within a time specified in the direction<sup>4</sup>. In determining whether to approve the proposals the Secretary of State and the Welsh Ministers must have regard to the considerations to which the authority was required to have regard in making the proposals<sup>5</sup>, and must not approve proposals in so far as it appears that any resulting smallholding<sup>6</sup> would exceed the upper limit for a smallholding<sup>7</sup>. Nevertheless, the Secretary of State and the Welsh Ministers may approve proposals notwithstanding that any resulting smallholding would exceed this limit if the holdings are to be let as smallholdings<sup>8</sup> or if it is otherwise considered expedient to exceed it<sup>9</sup>.

The Secretary of State and the Welsh Ministers may approve any proposals either as submitted or with appropriate modifications, and may approve them, with or without modifications, either conditionally or unconditionally<sup>10</sup>, and thereupon, until the proposals are amended or superseded, the smallholdings authority has a duty both to perform its statutory functions<sup>11</sup> in such a way as to give effect to the proposals as so approved<sup>12</sup> and to comply with any conditions subject to which the approval is given<sup>13</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the meaning of 'smallholdings estate' see PARA 493 note 5.

3 In pursuance of the Agriculture Act 1970 s 42 (see PARA 501) or s 43 (see PARAS 503, 504). As to smallholdings authorities see PARAS 650-653.

4 Agriculture Act 1970 ss 41(1), 42(3).

5 Agriculture Act 1970 s 41(5). As to these considerations see s 40(2); and PARA 501.

- 6 As to the meaning of 'smallholding' see PARA 488.
- 7 Agriculture Act 1970 s 41(3). As to the upper limit for smallholdings see PARA 495.
- 8 Agriculture Act 1970 s 41(4)(a). As to the letting of smallholdings see s 44; and PARA 492.
- 9 Agriculture Act 1970 s 41(4)(b). It may be considered expedient to exceed the upper limit for smallholdings for reasons relating to the nature or extent of fixed equipment on the holding or holdings, or the special qualities of the soil, or where other exceptional circumstances prevail: s 41(4)(b). As to the meaning of 'fixed equipment' see PARA 494 note 6.
- 10 Agriculture Act 1970 s 41(2).
- 11 As to its functions under the Agriculture Act 1970 Pt III (ss 37-65). 'Functions' includes powers and duties: Agriculture Act 1947 s 109(1); Agriculture Act 1970 s 37(4).
- 12 Agriculture Act 1970 ss 41(6)(a), 42(5)(a).
- 13 Agriculture Act 1970 ss 41(6)(b), 42(5)(b).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **503. Other smallholdings proposals requiring approval.**

Where a smallholdings authority<sup>1</sup>, other than an exempt smallholdings authority<sup>2</sup>, proposes to enlarge, amalgamate or improve existing smallholdings or to create new smallholdings<sup>3</sup>, it must submit its proposals to the Secretary of State or the Welsh Ministers<sup>4</sup> if:

- 243 (1) the transaction would be inconsistent with any previously approved reorganisation proposals for the time being in force and has not been provided for by previously approved proposals not being the initial or review proposals<sup>5</sup>; and
- 244 (2) the transaction is intended to be carried out at a time when no review of the smallholdings estate<sup>6</sup> is required by a direction of the Secretary of State or the Welsh Ministers to be carried out<sup>7</sup>.

Such proposals must be submitted by way of amending the authority's previously approved proposals submitted on a review for the time being in force<sup>8</sup>, must comply with any directions of the Secretary of State or the Welsh Ministers as to form and content<sup>9</sup>, and are then subject to approval or rejection by the Secretary of State or the Welsh Ministers<sup>10</sup>. Where the proposals are approved it is the authority's duty to perform its smallholdings functions under the

Agriculture Act 1970<sup>11</sup> in such a way as to give effect to the approved proposals for the time being in force, and to comply with any conditions subject to which the approval was given<sup>12</sup>.

- 1 As to smallholdings authorities see PARAS 650-653.
- 2 As to exempt authorities see PARA 501 note 5.
- 3 Ie under the Agriculture Act 1970 s 40(2)(a), (b) or (c): see PARA 501. As to the meanings of 'smallholding' and 'existing smallholding' see PARA 488.
- 4 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 5 Agriculture Act 1970 s 43(1)(a). As to the initial and review proposals see PARA 501.
- 6 As to the meaning of 'smallholdings estate' see PARA 493 note 5.
- 7 Agriculture Act 1970 s 43(1)(b).
- 8 Agriculture Act 1970 s 43(2).
- 9 Agriculture Act 1970 ss 40(3), 43(5).
- 10 The procedure for approval or rejection is set out in PARA 502.
- 11 Ie functions under the Agriculture Act 1970 Pt III (ss 37-65). As to the meaning of 'functions' see PARA 502 note 11.
- 12 Agriculture Act 1970 ss 42(5), 43(6).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **504. Submission of proposals by exempt smallholdings authorities.**

Where an exempt smallholdings authority<sup>1</sup> proposes to enlarge a smallholding<sup>2</sup> or to amalgamate the whole or part of one or more existing smallholdings<sup>3</sup> with other land or to create new smallholdings<sup>4</sup>, and that transaction has not been included in previously approved proposals<sup>5</sup>, it must submit to the Secretary of State or the Welsh Ministers<sup>6</sup> proposals for carrying out that transaction<sup>7</sup>. Such proposals must comply with any directions of the Secretary of State or the Welsh Ministers as to form and content<sup>8</sup>, and are then subject to approval or rejection by the Secretary of State or the Welsh Ministers<sup>9</sup>. If an exempt authority proposes to

improve an existing smallholding<sup>10</sup> it may, for the purpose of obtaining an increased capital grant<sup>11</sup>, submit to the Secretary of State or the Welsh Ministers proposals for carrying out the improvement<sup>12</sup>. Where the proposals are approved the authority has a duty both to perform its smallholdings functions under the Agriculture Act 1970<sup>13</sup> in such a way as to give effect to the proposals as so approved and also to comply with any conditions subject to which the approval was given<sup>14</sup>.

1 For the purposes of the Agriculture Act 1970 s 43 'exempt smallholdings authority' means a smallholdings authority in respect of which a direction under s 40(4) (see PARA 501 note 5) has been made: s 43(8). As to smallholdings authorities generally see PARAS 650-653.

2 As to the meaning of 'smallholding' see PARA 488.

3 As to the meaning of 'existing smallholding' see PARA 488.

4 Ie under the Agriculture Act 1970 s 40(2)(a) or (c): see PARA 501.

5 Ie proposals under the Agriculture Act 1970 s 43 (see PARA 503).

6 As to the Secretary of State and the Welsh Ministers see PARA 643.

7 Agriculture Act 1970 s 43(3).

8 Agriculture Act 1970 ss 40(3), 43(5).

9 The procedure for approval or rejection is set out in PARA 502.

10 Ie under the Agriculture Act 1970 s 40(2)(b) (see PARA 501).

11 Ie under the Agriculture Act 1970 s 51: see PARA 509.

12 Agriculture Act 1970 s 43(4).

13 Ie functions under the Agriculture Act 1970 Pt III (ss 37-65). As to the meaning of 'functions' see PARA 502 note 11.

14 Agriculture Act 1970 ss 41(6), 43(7).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **(iii) Provision of Services**

### 505. Managing smallholdings.

The powers of a smallholdings authority<sup>1</sup>, the Secretary of State and the Welsh Ministers<sup>2</sup>, in relation to land held for the purposes of smallholdings<sup>3</sup> include, in general, all powers required for the management of land so held<sup>4</sup>. In particular, an authority, the Secretary of State and the Welsh Ministers have the following powers:

- 245 (1) for the benefit of the occupiers of smallholdings provided by them, to further the formation of corporate or unincorporated bodies of persons having for their object or one of their objects the promotion of efficiency in the conduct of smallholdings through co-operative methods, including the co-operative purchase and hiring of requisites for, or the co-operative sale, marketing or preparation for marketing of the produce of, the smallholdings, and to assist the activities of such bodies<sup>5</sup>;
- 246 (2) to assist or promote co-operative schemes for the conduct of smallholdings provided by the authority, the Secretary of State or the Welsh Ministers, by purchasing or hiring, and by selling or letting machinery and other equipment, live<sup>6</sup> or dead stock, seeds, fertilisers or other requisites, and by the provision of services<sup>7</sup>;
- 247 (3) to carry out arrangements made by them for the disposal by them of the produce of smallholdings which they have provided<sup>8</sup>;
- 248 (4) to provide, improve, maintain or repair fixed equipment<sup>9</sup> or to carry out other improvements for the benefit of the land held by them for the purposes of smallholdings<sup>10</sup>.

In general, the provision of buildings or the making of any material change in the use of buildings on land acquired for smallholdings requires planning permission, but certain development is permitted, as in the case of land used for allotments, without permission<sup>11</sup>.

1 As to smallholdings authorities see PARAS 650-653. The powers given to smallholdings authorities which are considered in this paragraph relate only to their capacity as corporations, and nothing in those provisions may be construed as authorising any act or omission on the part of a smallholdings authority which, apart from these provisions, would be actionable at the suit of any persons on any grounds other than a limitation imposed by law on their capacity as corporations: Agriculture Act 1970 s 37(5). As to the capacity of corporations and the operation of the doctrine of ultra vires see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1223 et seq.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 As to the meaning of 'smallholding' see PARA 488. As to land held by a smallholdings authority for the purposes of smallholdings see PARA 488 text and notes 14, 15. As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646.

4 Agriculture Act 1970 ss 47(1), 54(1), (2).

5 See the Agriculture Act 1970 s 47(2); and PARA 652.

6 As to the meaning of 'livestock' see PARA 324 note 2.

7 Agriculture Act 1970 s 47(3). Where for the purpose of assisting the conduct of smallholdings on land held for the purposes of smallholdings the Secretary of State or the Welsh Ministers have acquired by purchase or hiring machinery or other equipment, live or dead stock, seeds, fertilisers or other requisites, or provide any services, the powers of the Secretary of State and the Welsh Ministers under s 47(3) (as applied by s 54(2)) include power to sell or let them to, or (as the case may be) to provide the services for, any persons, whether they are tenants of smallholdings or not: s 54(3).

8 Agriculture Act 1970 s 47(4). Where any arrangements are made by the Secretary of State or the Welsh Ministers under s 47(4) (as applied by s 54(2)), and it appears to the Secretary of State or the Welsh Ministers that any facilities provided in accordance with the arrangements are not required to be reserved exclusively for disposing of the produce of smallholdings on land held for the purposes of smallholdings, the arrangements

may include provision for the use of those facilities for disposing of the produce of other agricultural holdings: s 54(4).

9 As to the meaning of 'fixed equipment' see PARA 494 note 6.

10 Agriculture Act 1970 s 46(1). See PARA 506.

11 See PARA 583.

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **506. Equipment of smallholdings.**

In addition to their powers to provide, improve, maintain and repair fixed equipment<sup>1</sup> on land held by them for the purposes of smallholdings<sup>2</sup>, to carry out any other improvement on or for the benefit of any such land<sup>3</sup>, a smallholdings authority, the Secretary of State and the Welsh Ministers may enter into an agreement with a tenant of any such land for the provision, improvement, maintenance or repair by them of fixed equipment on the land, or the carrying out by them of other improvements on it or for its benefit, on terms specified in the agreement<sup>4</sup>.

1 As to the meaning of 'fixed equipment' see PARA 494 note 6.

2 As to the purposes of smallholdings, and as to land held by a smallholdings authority for those purposes, see PARA 488 notes 14, 15. As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646. As to the meaning of 'smallholding' see PARA 488. As to smallholdings authorities see PARAS 650-653. As to the Secretary of State and the Welsh Ministers see PARA 643.

3 See the Agriculture Act 1970 ss 46(1), 54(1), (2); and PARA 505.

4 Agriculture Act 1970 ss 46(2), 54(1), (2).

## UPDATE

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **507. Power of smallholdings authorities to make loans and guarantees.**

A smallholdings authority<sup>1</sup> may make loans for the purpose of providing working capital<sup>2</sup> for a tenant of a smallholding provided by it<sup>3</sup>, or for an intending tenant, or may guarantee the repayment of and the payment of interest on any loan made for that purpose by another person<sup>4</sup>, but no such loan or guarantee<sup>5</sup> may exceed three-quarters of the aggregate working capital which, in the authority's opinion, is required for the proper working of the holding<sup>6</sup>, and no loan may be made or guaranteed save under a written agreement specifying the maximum period of the loan or guarantee and the rate of interest<sup>7</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 'Working capital' includes any sum paid or payable by an incoming tenant, whether to the landlord or to the outgoing tenant, in respect of compensation paid or payable to an outgoing tenant: Agriculture Act 1970 s 37(1).

3 'Smallholding provided by a smallholdings authority' means any land for the time being held by the authority for the purposes of smallholdings and let as a smallholding either under the Agriculture Act 1970 Pt III (ss 37-65) or under the previous enactments relating to smallholdings: s 37(2)(b). As to the meaning of 'smallholding', the purposes of smallholdings, and land held by a smallholdings authority for those purposes, see PARA 488. As to the previous enactments relating to smallholdings see PARA 497 note 8.

4 Agriculture Act 1970 s 53(1). For a similar power of the Secretary of State and the Welsh Ministers in respect of loans (but not guarantees) see PARA 508. As to the Secretary of State and the Welsh Ministers generally see PARA 643.

5 If two or more loans are made or guaranteed this restriction is applicable to the aggregate amount of those loans: Agriculture Act 1970 s 53(2).

6 Agriculture Act 1970 s 53(2).

7 Agriculture Act 1970 s 53(7). The loan must bear interest at one-half of one per cent above the rate which, on the date of the agreement, is the rate determined by the Treasury under the National Loans Act 1968 s 5 in respect of local loans then made on the security of local rates (as defined in s 6(2)) for the same period or, where two or more rates are so determined, such of those rates as the Treasury specifies for the purpose and publishes in the London Gazette: Agriculture Act 1970 s 53(3)-(5), (8). The authority may not guarantee a loan which bears a higher rate of interest than would be chargeable had the authority made the loan: s 53(6). As to the National Loans Act 1968 ss 5, 6 see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 736; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1386. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

### **UPDATE**

**488-509 Lettings and sales under earlier smallholdings legislation ...  
Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **508. Power of Secretary of State and Welsh Ministers to make loans in connection with smallholdings.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may, in accordance with arrangements made by him or them with Treasury approval<sup>2</sup>, make loans to provide working capital<sup>3</sup> for a smallholdings tenant on land held by the Secretary of State or the Welsh Ministers for smallholdings purposes<sup>4</sup>, or for an intending tenant<sup>5</sup>, but the loan, or, if two or more loans are so made, the aggregate amount of the loans, must not exceed three-quarters of the aggregate working capital which in the opinion of the Secretary of State or the Welsh Ministers is required for the proper working of the smallholding<sup>6</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 As to the meaning of 'working capital' see PARA 507 note 2.

4 As to the meaning of 'smallholding' and the purposes of smallholdings see PARA 488. As to land held by the Secretary of State or the Welsh Ministers for smallholdings purposes see PARA 646.

5 Agriculture Act 1970 s 54(5).

6 Agriculture Act 1970 s 54(6).

### **UPDATE**

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.



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### **509. Increase of farm capital grants to smallholdings authority.**

Where a farm capital grant<sup>1</sup> was made to a smallholdings authority<sup>2</sup> in respect of expenditure:

- 249 (1) incurred or to be incurred in respect of certain works or facilities required to give effect to approved reorganisation proposals<sup>3</sup>; and
- 250 (2) qualified under the scheme for consideration for the grant within five years beginning with 1 January 1971<sup>4</sup>,

the Secretary of State or, as the case may be, the Welsh Ministers<sup>5</sup> may increase the grant by one-tenth of the relevant expenditure<sup>6</sup>. No increase can, however, be granted if the land on which the works are to be carried out or the facilities provided is or forms part of a holding which, in the opinion of the Secretary of State or the Welsh Ministers, would without those works or facilities be a commercial unit<sup>7</sup>.

Application for an increase may be made at any time after the smallholdings authority has submitted relevant proposals<sup>8</sup>, and where the relevant proposals are comprised in reorganisation proposals submitted on an initial review<sup>9</sup> the increase may be granted when the Secretary of State or the Welsh Ministers, as the case may be, has or have approved so much of those proposals as consist of the relevant proposals<sup>10</sup>.

1    Ie a grant made under a scheme made under the Agriculture Act 1970 s 29 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1345-1349).

2    As to smallholdings authorities see PARAS 650-653.

3    Agriculture Act 1970 s 51(1)(a). The reference in the text to approved reorganisation proposals is a reference to proposals approved under s 41 or s 43: see PARA 501 et seq.

4    Agriculture Act 1970 s 51(1)(b). 1 January 1971 is the date when the first such scheme (ie the Farm Capital Grant Scheme 1970, SI 1970/1759 (revoked)) providing for grants to smallholdings authorities came into operation.

5    As to the Secretary of State and the Welsh Ministers see PARA 643.

6    Agriculture Act 1970 s 51(1).

7    Agriculture Act 1970 s 51(1). As to the meaning of 'commercial unit' see the Agriculture Act 1967 s 40(2) (a); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338 note 5.

8    Ie under the Agriculture Act 1970 s 40 or s 43 (see PARA 501 et seq). 'Relevant proposals' means the proposals in connection with which the smallholdings authority claims that the works or facilities are required: s 51(2)(a).

9    Ie under the Agriculture Act 1970 s 40; see PARA 501 et seq.

10   Agriculture Act 1970 s 51(2).

## **UPDATE**

### **488-509 Lettings and sales under earlier smallholdings legislation ... Increase of farm capital grants to smallholdings authority**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **(4) ALLOTMENTS**

### **(i) Introduction**

#### **510. Meaning of 'allotment'.**

The term 'allotment' is used in this title mainly as referring to lands which are held by local authorities<sup>1</sup> under the Allotments Acts 1908 to 1950<sup>2</sup> for the purpose of providing persons resident in their areas with small plots of land for cultivation<sup>3</sup>. Whilst there is no comprehensive statutory definition of 'allotment' for the purposes of those Acts, a field garden<sup>4</sup> and an allotment garden<sup>5</sup> are generally allotments<sup>6</sup>. Although there are no general statutory limits on the size of an allotment or requirements as to its use, definitions for the purposes of particular enactments sometimes prescribe these; for example, 'allotment' in the Allotments Act 1925 means an allotment garden or any parcel of land not more than five acres in extent cultivated or intended to be cultivated as a garden or farm or partly as a garden and partly as a farm<sup>7</sup>; and for the purpose of certain provisions relating to compensation on the termination of a tenancy<sup>8</sup>, 'allotment' means any parcel of land, whether attached to a cottage or not, of not more than two acres in extent, held by a tenant under a landlord<sup>9</sup> otherwise than under a farm business tenancy<sup>10</sup> and cultivated as a farm or a garden or partly as a garden and partly as a farm<sup>11</sup>.

1 Local authorities' obligations to provide allotments are now confined to providing allotment gardens: see PARA 520; and as to the meaning of 'allotment garden' see note 5.

2 The Allotments Acts 1908 to 1950 are: so much of the Small Holdings and Allotments Act 1908 as relates to allotments; so much of the Land Settlement (Facilities) Act 1919 as amends the Small Holdings and Allotments Act 1908; the Allotments Act 1922; the Allotments Act 1925; the Small Holdings and Allotments Act 1926; so much of the Agricultural Land (Utilisation) Act 1931 Pt II (ss 12, 17, 20) as relates to allotments; and the Allotments Act 1950: Land Settlement (Facilities) Act 1919 s 34; Allotments Act 1922 s 23(1); Allotments Act 1925 s 14(1); Small Holdings and Allotments Act 1926 s 23(1); Agricultural Land (Utilisation) Act 1931 s 25(1); Allotments Act 1950 s 15(1).

3 As to the meaning of 'cultivation' see PARA 324 note 5.

4 A field garden is an allotment for the labouring poor: see the Commons Act 1876, preamble (repealed). As to field garden allotments see PARA 512.

5 As to the meaning of 'allotment garden' see PARA 324 note 11.

6 See the Small Holdings and Allotments Act 1908 s 61(1) and the Allotments Act 1925 s 1.

7 Allotments Act 1925 s 1. The definition is subject to any contrary requirement of the context: s 1.

8 See the Allotments Act 1922 s 3; and PARA 578.

9 In the Allotments Act 1922 and the Allotments Act 1950 the expression 'landlord' means in relation to any land the person for the time being entitled to receive the rents and profits of the land; and the designations of 'landlord' and 'tenant' continue to apply to the parties until the conclusion of any proceedings taken under the Act in respect of compensation and include the legal personal representative of either party: Allotments Act 1922 s 22(1); Allotments Act 1950 s 14(1).

10 Is a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995; see ss 1, 2; and PARA 301 et seq.

11 Allotments Act 1922 s 3(7) (amended by the Agricultural Tenancies Act 1995 Schedule para 3). Such an allotment does not include a plot occupied by a seedsman for business purposes, but is a plot cultivated for food or pleasure: *Cooper v Pearse* [1896] 1 QB 562.

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### 511. Parochial and other allotments.

During the nineteenth century allotments<sup>1</sup> were provided for cultivation by poor and industrious parishioners and as recreation grounds for the parishioners<sup>2</sup> under certain Poor Law and Inclosure Acts and by appropriation of parochial charity lands for that purpose. The allotments here considered are field garden allotments<sup>3</sup> and allotments for fuel and certain other public purposes<sup>4</sup>. Provision was also formerly made for the acquisition and administration of poor allotments<sup>5</sup>.

Allotments vested in the overseers<sup>6</sup>, or churchwardens and overseers, of a rural parish were transferred to the parish council when that council came into being<sup>7</sup> or, where there was no parish council, to the parish meeting<sup>8</sup>. Trustees holding any property for the purposes of allotments for the benefit of the inhabitants of a parish or, in Wales, a community<sup>9</sup>, having a council may, with the approval of the Charity Commission<sup>10</sup> and with the consent of that council, transfer the property to the council or to persons appointed by it, to be held on the same trusts and subject to the same conditions as when it was held by the trustees<sup>11</sup>. The Local Government Board had power to confer on municipal, county borough and urban district councils the powers, duties and liabilities of parish councils<sup>12</sup>, and in 1933 all remaining functions and liabilities of vestries and churchwardens not relating to the church or charities were transferred to the borough or urban district council<sup>13</sup>.

Allotment wardens, who managed allotments and field gardens for the labouring poor<sup>14</sup>, could transfer the management to the appropriate council<sup>15</sup>, and the powers and duties of wardens, committees and managers of allotments in rural parishes were transferred to the parish or community council or, where there was no such council, persons appointed by the parish or community meeting<sup>16</sup>.

Allotments held by overseers or churchwardens of urban parishes were transferred to county borough and urban district councils and are now vested in district and London borough councils or, in Wales, county or county borough councils<sup>17</sup>.

Thus, with the exception of allotments which have not been transferred to the local authority by the trustees in whom they are vested, any such allotment, together with the powers and duties respecting it, is now vested in or under the control of the London borough, district, parish, or, in Wales, county, county borough or community council, and is managed by it as one unit with lands acquired under the Allotments Acts<sup>18</sup>.

- 1 As to the meaning of 'allotment' see PARA 510.
- 2 As to allotments for recreation see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 537.
- 3 See PARAS 512, 519, 530, 556, 562.
- 4 See PARAS 513-515, 519, 648.
- 5 Poor allotments were parish lands possessed or acquired by poor law authorities under the Poor Relief Act 1819, or by the inclosure of waste or common land under the Poor Relief Act 1831, or by the inclosure under the Crown Lands Allotments Act 1831 of forest or waste Crown land, for the employment of poor persons or for letting to poor persons for cultivation on their own account: Poor Relief Act 1819 ss 12, 13; Poor Relief Act 1831 ss 1, 2; Crown Lands Allotments Act 1831. Those Acts were repealed by the Poor Law Act 1927, itself repealed by the Poor Law Act 1930, repealed in turn by the National Assistance Act 1948 Sch 7 (repealed). Land inclosed in the exercise of those powers or otherwise appropriated for the general benefit of the poor of any parish was subsequently authorised to be let to industrious cottagers living in or near the parish where the land was situated for the purpose of cultivation (see the Allotments Act 1832 ss 1, 11 (repealed)), and the rents derived from those lettings were to be applied, after the deduction of all proper charges, in aid of the poor rate of the parish (see the Poor Allotments Management Act 1873 s 14 (repealed)).  
  
In this title 'inclosure' is used as referring to a legal process involving the extinction of common rights, as opposed to the 'enclosure' of land with fences or walls: see the Report of the Royal Commission on Common Land 1955-1958 (Cmnd 462) App III para 29.
- 6 Overseers were abolished and their functions transferred to rating authorities by the Rating and Valuation Act 1925 s 62(1) (repealed), (3).
- 7 Local Government Act 1894 s 6(1)(c)(iii).
- 8 Local Government Act 1894 s 19 (amended by the Statute Law Revision Act 1908; the Local Government Act 1933 ss 307, 308, Sch 11 Pt IV; the Charities Act 1960 Sch 7 Pt I; and SI 1979/1123); Overseers Order 1927, SR & O 1927/55, arts 4(2), 7. The effect of subsequent legislation has been that statutory references to parishes and parish councils, so far as relating to Wales, should be read as references to communities and community councils: see PARA 520 note 2.
- 9 The Charities Act 1993 s 79(1) refers to a 'parish' but this should be construed as a reference to the authorities mentioned in the text: see PARA 520 note 2.
- 10 As to the Charity Commission (which replaced the Charity Commissioners) see **CHARITIES** vol 8 (2010) PARA 538 et seq.
- 11 See the Charities Act 1993 s 79(1); and **CHARITIES** vol 8 (2010) PARA 263.
- 12 Local Government Act 1894 s 33 (repealed).
- 13 Local Government Act 1933 s 269(1) (repealed). Those functions and liabilities are now vested in district and London borough councils or, in Wales, county or county borough councils: see PARA 520 notes 1-5.
- 14 See the Inclosure Act 1845 s 108 (amended by the Statute Law Revision Act 1891).
- 15 See the Small Holdings and Allotments Act 1908 s 33(1); and PARA 556.
- 16 Small Holdings and Allotments Act 1908 s 33(3).
- 17 See the Overseers Order 1927, SR & O 1927/55, arts 4, 5; and PARA 520 notes 1-5.
- 18 Small Holdings and Allotments Act 1908 s 33(4).

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## **512. Field garden allotments.**

Field gardens are allotments for the labouring poor<sup>1</sup>, and comprise lands appropriated as such upon the inclosure<sup>2</sup> of lands or the regulation of commons<sup>3</sup>. Their management was formerly the responsibility of allotment wardens<sup>4</sup> but is now the responsibility of local authorities (generally parish or community councils)<sup>5</sup>.

1 See the Commons Act 1876, preamble (repealed). The term 'allotment' in the Small Holdings and Allotments Act 1908 includes a field garden: see s 61(1); and PARA 510. 'Field garden allotment' in the Acquisition of Land Act 1981 and the Town and Country Planning Act 1990 means any allotment set out as a field garden allotment under an Inclosure Act: see the Acquisition of Land Act 1981 s 19(4); the Town and Country Planning Act 1990 s 336; **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934.

2 As to the meaning of 'inclosure' see PARA 511 note 5.

3 See the Inclosure Act 1845 ss 31 (repealed), 73; the Inclosure Act 1846 s 4 (repealed); the Commons Act 1876 ss 21-23 (repealed); the Commonable Rights Compensation Act 1882 s 3; and **COMMONS** vol 13 (2009) PARA 419.

4 See the Inclosure Act 1845 s 108 (amended by the Statute Law Revision Act 1891).

5 As to the transfer of the allotment wardens' management functions see PARA 511; and see further PARA 562.

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### 513. Fuel allotments.

A fuel allotment has been defined as an allotment set out as a fuel allotment under an Inclosure Act<sup>1</sup>, or as land which by any enactment relating to inclosure or any instrument having effect under such an enactment is vested in trustees upon trust that the land or the rents and profits of the land be used for the purpose of providing poor persons with fuel<sup>2</sup>. Fuel allotments were frequently set out both under private Inclosure Acts and in the early days of the Inclosure Commissioners in the north of England and other hilly regions where there were turbarry rights and peat or turf which could be used as fuel<sup>3</sup>. They were often of considerable extent, and, coming as they did within the definition of land subject to be inclosed<sup>4</sup>, when no longer suitable for the purposes for which they were set out or not required, were the subject of subsequent inclosure or regulation<sup>5</sup>. Because rights in fuel allotments are vested in a fluctuating body of persons they cannot be registered as commons. In practice many areas of land formerly set aside as fuel allotments are now to all intents and purposes public open land.

1 See the Acquisition of Land Act 1981 s 19(4); the Town and Country Planning Act 1990 s 336(1); **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934.

2 See the Charities Act 1993 s 15(3), Sch 4 para 1(d); and **CHARITIES** vol 8 (2010) PARA 183. As to the meaning of 'inclosure' see PARA 511 note 5. Allotments for the supply of fuel for the labouring poor were among the principal matters for which allotments could be made and continued in use under parochial or other management: see the Inclosure Act 1845 s 34 (repealed). As to the vesting of fuel allotments see PARA 515; as to exchange, appropriation and change of use see PARAS 588-590, 648. As to the establishment of charitable fuel allotments see PARA 519.

The Charity Commission or the High Court may, notwithstanding the restriction on diverting fuel allotments from the purposes declared by the Act authorising their inclosure (see the Commons Act 1876 s 19; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 552), establish schemes for the administration of charitable fuel allotments, which may provide for the sale or letting of an allotment or any part of it, for the discharge of the land sold or let from restrictions on its use imposed by or under any enactment relating to inclosure, and for the application of the purchase money or rent received by the trustees, for the exchange of an allotment or part of it for other land and for the application of money payable to the trustees for equality of exchange, and for the

use of an allotment or any part of it for any purposes specified in the scheme (see the Charities Act 1993 ss 15, 16, Sch 4 paras 1(d), 2; and **CHARITIES** vol 8 (2010) PARAS 183, 187). The scheme may modify or supersede in relation to the fuel allotment the provision made by the Inclosure Act or instrument thereunder setting up the allotment as if that provision had been made by a scheme (see the Charities Act 1993 s 15(3); and **CHARITIES** vol 8 (2010) PARA 183). As to the Charity Commission (which replaced the Charity Commissioners) see **CHARITIES** vol 8 (2010) PARA 538 et seq.

3 As to rights of common of turbary (ie the right to dig turf or peat in another man's ground for fuel) see **COMMONS** vol 13 (2009) PARAS 457, 458.

4 See the Inclosure Act 1845 s 11; and **COMMONS** vol 13 (2009) PARA 419.

5 Eg the fuel allotment which was the subject of dispute in *A-G v Meyrick* [1893] AC 1, HL; and Harrow Weald Common, which was an old gravel allotment and was the subject of a scheme under the Metropolitan Commons Acts (as to which see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 73A).

Where fuel allotments provided under local Inclosure Acts before 1845 became useless and unproductive, the trustees, together with the churchwardens and overseers of the parish, were required to let them to industrious cottagers living in or near the parish for the purposes of cultivation, and the rents received from the lettings were to be applied for the purchase of fuel for distribution to poor parishioners: see the Allotments Act 1832 s 8 (repealed).

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#### 514. Allotments for other public purposes.

Allotments may be made to highway authorities for obtaining stone, gravel and other materials for road repairs, and the grass and herbage of such allotments may be awarded to other persons or let by the authority<sup>1</sup>. A highway authority may by ceasing to use such allotments and obtaining its materials elsewhere lose its right to extract such materials, and an adverse title may be acquired against the authority by other persons<sup>2</sup>.

1 See the Inclosure Act 1845 s 72; and **COMMONS** vol 13 (Reissue) PARA 420. The terms of the Act and the award must be strictly adhered to: where an allotment was made under the Inclosure Acts for obtaining stone, gravel and other materials for repairing highways and public and private roads for the use of the inhabitants of the parish, it was held that such allotments were for road repairs only, and that a user by inhabitants for private purposes was not authorised: *Rylatt v Marfleet* (1845) 14 M & W 233. As to the vesting of allotments for public purposes see PARA 515; as to exchange, appropriation and change of use see PARAS 588-590, 648.

2 *Thew v Wingate* (1862) 10 B & S 714; *Smith v Stocks* (1869) 10 B & S 701 at 713.

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#### 515. Vesting of fuel and other allotments.

Fuel allotments<sup>1</sup> and other allotments for public purposes<sup>2</sup> might be allotted to such persons and subject to such directions as the valuer should direct, or if the valuer should not think it necessary or proper to direct it to be otherwise made, the allotment was to be made to the churchwardens and overseers of the parish<sup>3</sup>. Such allotments were frequently vested in the lord of the manor as trustee for the labouring poor of the parish or other persons entitled, or they may have been set out for this purpose, but not allotted to any specific persons by name or

office. In such cases questions have arisen as to the ownership of the soil. Where the allotment was not made to any person by name or office, the lord's interest in the soil remained, if there was nothing in the Act or award to transfer it, and he consequently had power to refuse his consent to, and to prevent, a subsequent inclosure<sup>4</sup>. If the allotment was made to the lord as trustee, and the trust as declared in the award did not exhaust the beneficial interest in the land, the lord was entitled to the unexhausted benefit<sup>5</sup>. Where, however, the allotment was made to the churchwardens and overseers for the purposes of a fuel allotment, the legal estate in the land was vested in them<sup>6</sup>, and presumably the lord would be excluded from any benefit if he received an allotment in respect of his right and interest in the soil, and there was no reservation of rights from which a reservation of the soil of the fuel allotment might be implied<sup>7</sup>.

1 As to fuel allotments see PARA 513.

2 As to other allotments for public purposes see PARA 514.

3 See the Inclosure Act 1845 s 73; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 549. Overseers have been abolished, and fuel allotments are vested in parish, district, county, county borough or community councils: see PARA 511.

4 See *R v Inclosure Comrs for England and Wales* (1871) 23 LT 778, where a large fuel allotment had been set out under an early inclosure on Chobham Common. As to the meaning of 'inclosure' see PARA 511 note 5.

5 *A-G v Meyrick* [1893] AC 1, HL.

6 *Simcoe v Pethick* [1898] 2 QB 555, CA. See, however, note 3.

7 See *A-G v Meyrick* [1893] AC 1, HL.

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## 516. Privately let allotments.

Land privately owned may be let for use as allotments free from local authority control; and whilst the statutory provisions relating to the determination of tenancies and compensation<sup>1</sup> apply to such land it is otherwise governed by the general law relating to the letting of land, and is not further discussed in this title.

1 See PARA 563 et seq.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(4) ALLOTMENTS/(i) Introduction/517. Application to allotments of legislation relating to agricultural holdings and farm business tenancies.

## 517. Application to allotments of legislation relating to agricultural holdings and farm business tenancies.

An allotment which comprises land which is used or ought to be brought into use for agriculture<sup>1</sup> and which is so used for the purposes of trade or business, or land which is designated by the Secretary of State or the Welsh Ministers<sup>2</sup> as agricultural land for the purposes of the Agriculture Act 1947<sup>3</sup>, is subject to the provisions of that Act, which are

principally concerned with securing efficiencies in estate management, husbandry and production<sup>4</sup>.

An allotment which is, or which is comprised in land the aggregate of which (whether agricultural land<sup>5</sup> or not) is, comprised in a contract of tenancy<sup>6</sup> entered into before 1 September 1995<sup>7</sup> which is a contract for an agricultural tenancy<sup>8</sup>, not being a contract under which the land is let to the tenant during his continuance in an office, appointment or employment held under the landlord<sup>9</sup>, is an 'agricultural holding' for the purposes of the Agricultural Holdings Act 1986 and is accordingly subject to the provisions of that Act, which are principally concerned with the regulation of tenancy agreements concerning agricultural land<sup>10</sup>.

An allotment which is comprised in a tenancy which begins on or after 1 September 1995 and which complies with certain conditions<sup>11</sup> will in general be subject to the provisions of the Agricultural Tenancies Act 1995 relating to farm business tenancies<sup>12</sup>. An allotment garden cannot be subject to the provisions relating to farm business tenancies as, by definition, it cannot be land used for the purposes of trade or business<sup>13</sup>. Nor may a cottage holding be so subject, since no new cottage holding could be granted after 1970<sup>14</sup>.

1 As to the meaning of 'agriculture' for these purposes see PARA 324.

2 As to the Secretary of State and the Welsh Ministers see PARA 643. Note that no such designation may extend to land used as allotment gardens: see the Agriculture Act 1947 s 109(1) (proviso); and PARA 324.

3 As to the meaning of 'agricultural land' for these purposes see PARA 324.

4 See the Agriculture Act 1947 s 109(1); and PARA 324.

5 See note 3.

6 As to the meaning of 'contract of tenancy' for these purposes see PARA 325.

7 Such a tenancy entered into on or after 1 September 1995 (ie the date on which the Agricultural Tenancies Act 1995 came into force: see s 41(2)) will in general be subject to the provisions of the Agricultural Tenancies Act 1995 relating to farm business tenancies (see the text and notes 11-12) and not to the provisions of the Agricultural Holdings Act 1986 concerned with the regulation of tenancy agreements concerning agricultural land: see the Agricultural Tenancies Act 1995 ss 1, 2; and PARA 301 et seq.

8 As to a 'contract for an agricultural tenancy' for these purposes see PARA 323.

9 See *Stevens v Sedgman* [1951] 2 KB 434, [1951] 2 All ER 33, CA, where an allotment of under half an acre used by the tenant to produce vegetables was held to be an agricultural holding.

10 See the Agricultural Holdings Act 1986 s 1(1); and PARA 323. Note that an allotment garden cannot be an agricultural holding as, by definition (see PARA 324 note 11), it cannot be land used for the purposes of trade or business.

11 Ie the business conditions together with either the agriculture or notice conditions: see the Agricultural Tenancies Act 1995 s 1; and PARA 302.

12 See the Agricultural Tenancies Act 1995 ss 1(1), 2(1); and PARA 301 et seq. As to the tenancies beginning on or after 1 September 1995 which are not subject to the provisions relating to farm business tenancies (ie certain tenancies arising pursuant to contracts which indicated that the Agricultural Holdings Act 1986 was to apply; certain succession tenancies; tenancies granted under the Evesham custom; and certain variations of existing tenancies), and which are instead subject to the Agricultural Holdings Act 1986 (see the text and notes 5-10), see the Agricultural Tenancies Act 1995 ss 1(1)(b), 2(1)(b), 4; and PARA 301.

13 See PARA 324 note 11.

14 See PARAS 591-592.



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### **518. Application to allotments of legislation relating to rating, planning permission and non-agricultural usage.**

Allotments, including allotment gardens<sup>1</sup>, are 'agricultural land' for the purposes of the exemption from non-domestic rating applicable to hereditaments consisting of agricultural land<sup>2</sup>. Planning permission is not required for the development of allotments, since cultivation of an allotment amounts to agricultural use for the purposes of the Town and Country Planning Act 1990<sup>3</sup> and the use of land for the purposes of agriculture does not amount to development of the land for the purposes of that Act<sup>4</sup>.

Allotments are usually let for cultivation and may have restrictions that they should not be used for any trade or business. If an allotment is subsequently used for a trade or business without sufficient agricultural use the letting may be governed by the provisions of the Landlord and Tenant Act 1954 relating to security of tenure for business tenants<sup>5</sup>. Protection is given to a tenant where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes; however a tenant will not be protected where the business is carried on in breach of a covenant unless the landlord has waived the breach<sup>6</sup>.

1    le within the meaning of the Allotments Act 1922 (see PARA 324 note 11).

2    See the Local Government Finance Act 1988 Sch 5 paras 1(a), 2(1)(d); and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 43-44.

3    As to the meaning of 'agriculture' for the purposes of the Town and Country Planning Act 1990 see PARA 324.

4    See the Town and Country Planning Act 1990 s 55(2)(e); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 223.

5    See the Landlord and Tenant Act 1954 Pt II (ss 23-46); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 701 et seq. For the tenancies excluded from the protections of Pt II, which include tenancies of agricultural holdings subject to the provisions of the Agricultural Holdings Act 1986 and farm business tenancies subject to the Agricultural Tenancies Act 1995 (see PARA 517), see the Landlord and Tenant Act 1954 s 43; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 708.

6    See the Landlord and Tenant Act 1954 s 23(1), (4); and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 706.

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### **519. Administration of charitable allotments.**

Any provisions with respect to allotments for recreation grounds, field gardens or other public or parochial purposes contained in any Act relating to inclosure or in any award or order made under it, and any provisions as to the management of any such allotments contained in any such Act, award or order, may, on the application of any district or parish council interested in the allotment, be dealt with by a scheme of the Charity Commissioners in the exercise of their

ordinary jurisdiction as if those provisions had been established by the founder in the case of a charity having a founder<sup>1</sup>.

1 Commons Act 1899 s 18.

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## **(ii) Provision of Land**

### **A. LOCAL AUTHORITIES TO PROVIDE LAND FOR ALLOTMENTS**

#### **520. Local authorities' duty to provide allotments.**

A general duty is placed on any district<sup>1</sup>, parish<sup>2</sup>, or London borough council<sup>3</sup>, or, in Wales, any community<sup>4</sup>, county or county borough council<sup>5</sup>, if it is of opinion that there is a demand for allotments<sup>6</sup> in its area, to provide a sufficient number of allotments, and to let them to persons resident there and desiring to take the same<sup>7</sup>. Where the population of the relevant district, parish, London borough, community, county or county borough, according to the last published census, is under 10,000, the council's duty is limited to the provision of allotment gardens<sup>8</sup>. Where the population is 10,000 or higher, the council's obligation is limited to the provision of allotment gardens not exceeding one-eighth of an acre<sup>9</sup>.

Any land which on 31 July 1953<sup>10</sup> was let by a local authority<sup>11</sup> as an allotment garden under the Defence (General) Regulations 1939<sup>12</sup> or was appropriated for letting thereunder, may be let for use by tenants as allotment gardens or to a society having as its object the cultivation of vacant land for the purpose of subletting for such use<sup>13</sup>, but once any such land is returned to use as a park or open space or is otherwise appropriated for use for any purpose other than letting for allotment gardens it may not again be so let<sup>14</sup>.

1 The Small Holdings and Allotments Act 1908 s 23(1) refers to an 'urban district' but in practice this is a reference to a district in England, since the English urban districts (and their councils) were abolished on 1 April 1974 and statutory references thereto were replaced with references to districts (and their councils), and the Welsh districts (and their councils) were abolished on 1 April 1996 and statutory references thereto (or their councils) were replaced with references to counties or county boroughs (or their councils): see the Local Government Act 1972 ss 1(10), 20(6), (7), 179(1), (3) and the Local Government (Wales) Act 1994 s 17(1), (2), (4), (5); and as to the districts and counties in England and the counties and county boroughs in Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

2 As respects England, 'parish' is generally construed as a reference to a rural parish continued under the name of a parish by the Local Government Act 1972 s 1(6), urban parishes having been abolished on 1 April 1974 (ss 1(10), 20(6), 179(1), (4)). As respects Wales, 'parish' is construed as a reference to a community established under s 20(4), Sch 4 (as originally enacted) and continued by s 20(1): see s 179(1), (4); and as to parishes and communities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. In rural parishes or communities having no parish or community council the authority is the parish or community meeting: Small Holdings and Allotments Act 1908 s 61(4); Allotments Act 1922 s 22(1); Local Government Act 1972 s 179(1), (4); Allotments Act 1950 s 10(3).

3 The Small Holdings and Allotments Act 1908 s 23(1) refers to a 'borough' but in practice this is a reference only to London boroughs since all other English boroughs were abolished on 1 April 1974 (Local Government Act 1972 ss 1(9), (10), 26), and since 'borough' in any Act passed before 1 April 1974 cannot apply to county boroughs in Wales (Local Government (Wales) Act 1994 s 64(2)). As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. Note that in the case of an inner London borough the power to provide allotments is permissive not mandatory and the provisions relating to the making of

representations on the need for allotments by residents (see note 6) do not apply: Small Holdings and Allotments Act 1908 s 23(1) (amended by the Land Settlement (Facilities) Act 1919 s 25, Schs 2, 3); London Government Act 1963 s 55(4).

4 As to the establishment and role of communities and their councils see note 2.

5 As to the establishment and role in Wales of counties and county boroughs and their councils see note 1.

6 As to the meaning of 'allotment' see PARA 510. Representations in writing may be made to the local authority on the need for allotments by any six resident registered parliamentary electors or persons who are liable to pay an amount in respect of council tax, and the local authority must take such representation into consideration: Small Holdings and Allotments Act 1908 s 23(2) (amended by the Local Government Finance Act 1992 Sch 13 para 4). As to the registration of parliamentary electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 128 et seq. As to liability for council tax see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq. See also note 3.

7 Small Holdings and Allotments Act 1908 s 23(1) (as amended: see note 3).

8 Allotments Act 1950 s 9(a). As to the meaning of 'allotment garden' see PARA 324 note 11.

9 Allotments Act 1950 s 9(b). Section 9(b) as drafted refers to 'twenty poles': however, the pole (30¼ square yards) is no longer recognised as a unit of area and the area 'one-eighth of an acre' has accordingly been substituted.

10 Ie the date on which the Emergency Laws (Miscellaneous Provisions) Act 1953 was passed.

11 In the Emergency Laws (Miscellaneous Provisions) Act 1953 s 5 as originally enacted 'local authority' meant the Common Council of the City of London, the council of a metropolitan borough or the council of a county, county borough or county district: s 5(4)(b). As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq. As to the effect of successive local government reorganisations on the other local authorities referred to in s 5(4)(b) see notes 1-3; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

12 See the Defence (General) Regulations 1939, SR & O 1939/927, reg 62A (added by SR & O 1939/1838; and amended by SR & O 1940/1611; SR & O 1941/456) (now revoked), which authorised a local authority to let, to tenants for use as an allotment garden or to an allotment society, land occupied by the authority, unoccupied land to the possession of which it was entitled, and land forming part of a park or open space under its management or control.

13 Emergency Laws (Miscellaneous Provisions) Act 1953 s 5(1) (amended by the Statute Law (Repeals) Act 1976). A tenancy of land which, on 31 July 1953, was subsisting under the Defence (General) Regulations 1939, SR & O 1939/927, reg 62A (as added: see note 12), continues in force as if it had been granted under the Emergency Laws (Miscellaneous Provisions) Act 1953 s 5(1): s 5(5).

14 Emergency Laws (Miscellaneous Provisions) Act 1953 s 5(2).

## UPDATE

### 520 Local authorities' duty to provide allotments

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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### 521. Acquisition of land for allotments.

The necessary land for allotments<sup>1</sup> may be acquired by a local authority<sup>2</sup> by hiring by agreement<sup>3</sup>, by compulsory hiring<sup>4</sup>, by purchase by agreement<sup>5</sup>, by compulsory purchase<sup>6</sup>, and by the appropriation of land held for other purposes<sup>7</sup>. Certain local authorities may enter on unoccupied land for the purpose of providing allotment gardens<sup>8</sup>. Land may also be acquired by transfer from allotment wardens and trustees<sup>9</sup>. Acquisitions and disposals of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers<sup>10</sup>.

1 As to the meaning of 'allotment' see PARA 510.

2 As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

3 See PARAS 526-530.

4 See PARAS 534-551.

5 See PARAS 523-525.

6 See PARAS 531-533, 546-551.

7 See PARA 552.

8 See PARA 553. As to the meaning of 'allotment garden' see PARA 324 note 11.

9 See PARA 556.

10 See the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1). As to the Secretary of State and the Welsh Ministers see PARA 643.

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## 522. Acquisition of land for future allotments.

A district or London borough council, or, in Wales, a county or county borough council<sup>1</sup>, may acquire land for allotments<sup>2</sup>, notwithstanding that the land or any part of it cannot immediately be let in allotments, if the Secretary of State or the Welsh Ministers<sup>3</sup> is or are satisfied that there is a reasonable expectation that the land will eventually be required for allotments<sup>4</sup>.

1 The Allotments Act 1925 s 5 refers to 'the council of a borough or an urban district' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Allotments Act 1925 s 5 (amended by the Statute Law (Repeals) Act 1993). Acquisitions and disposals of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1).

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OF LAND/(A) Acquisition by Agreement/(a) Purchase/523. Purchase by agreement of land for allotments.

## **B. ACQUISITION OF LAND**

### **(A) ACQUISITION BY AGREEMENT**

#### *(a) Purchase*

#### **523. Purchase by agreement of land for allotments.**

The council of any district, parish, or London borough, or, in Wales, community, county or county borough<sup>1</sup> may, for the purpose of providing allotments<sup>2</sup>, by agreement purchase land<sup>3</sup> situated either within or without its area<sup>4</sup>. Land in the Duchy of Lancaster<sup>5</sup> may be sold to local authorities for the purpose of allotments<sup>6</sup>. A tenant for life may make a grant in fee simple or absolutely of any part of the settled land for a nominal price, or for less than the best price obtainable, or gratuitously<sup>7</sup>.

1 The Small Holdings and Allotments Act 1908 s 25(1) refers to 'the council of a borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the meaning of 'land' see PARA 324 note 5.

4 Small Holdings and Allotments Act 1908 s 25(1). For procedure and powers of entry where land is purchased by agreement see PARAS 524-525. Acquisitions and disposals of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). As to the Secretary of State and the Welsh Ministers see PARA 643.

5 As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

6 See the Local Government Act 1972 s 130; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 534.

7 See the Settled Land Act 1925 s 57(2); and **SETTLEMENTS** vol 42 (Reissue) PARA 831. The amount which may be granted is restricted, as in the case of leases: see PARA 527.

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#### **524. Procedure for purchasing land for allotments by agreement.**

The procedure for the non-compulsory purchase<sup>1</sup> of land<sup>2</sup> by councils<sup>3</sup> for the purpose of providing allotments is in general that provided for by the Compulsory Purchase Act 1965<sup>4</sup>. Provision is made as to the persons empowered to sell their interests<sup>5</sup>, the payment of compensation where the title to the land is in doubt<sup>6</sup>, powers of entry<sup>7</sup>, the purchase or redemption of special interests in the land such as mortgages<sup>8</sup>, the release of the land from rentcharges and, in the case of divided land, the apportionment of rents<sup>9</sup>, the compensation of tenants at will<sup>10</sup>, compensation for the purchase of common land<sup>11</sup>, the purchase of, or payment

of compensation for, land inadvertently omitted from the purchase<sup>12</sup>, conveyancing costs<sup>13</sup>, procedural irregularities<sup>14</sup>, and the service of notices<sup>15</sup>.

1    le purchase by agreement: see PARA 523.

2    As to the meaning of 'land' see PARA 324 note 5.

3    The local authorities empowered to purchase land for the purpose of providing allotments are district, parish, or London borough councils, or, in Wales, community, county or county borough councils: see PARA 523; and as to the local authorities which may be concerned with the provision of allotments generally, see PARA 520. As to the meaning of 'allotment' see PARA 510.

4    Small Holdings and Allotments Act 1908 s 38 (amended by the Compulsory Purchase Act 1965 s 38(1), Sch 6; and the Statute Law (Repeals) Act 1993). For the relevant provisions of the Compulsory Purchase Act 1965 see Pt I (ss 1-32) (excluding ss 4-8 (which make provision as to time limits, the payment of compensation and the sale of divided land), s 10 (compensation for injurious affection), s 23(1)-(5) (conveyancing costs), and s 31 (ecclesiastical property)); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 549 et seq.

5    See the Compulsory Purchase Act 1965 ss 2, 3, Sch 1; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 553.

6    See the Compulsory Purchase Act 1965 ss 9, 25, 26, 28; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 661 et seq.

7    See the Compulsory Purchase Act 1965 ss 11-13; PARA 525; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq.

8    See the Compulsory Purchase Act 1965 ss 14-17; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 712-714. Any expenses incurred by a council in the purchase or redemption of any quit rent, chief rent, tithe, or other rentcharge, or other perpetual annual sum issuing out of acquired land, is deemed to have been incurred in the purchase of the land: Small Holdings and Allotments Act 1908 s 61(3) (amended by the Statute Law (Repeals) Act 1964; and the Statute Law (Repeals) Act 1993).

9    See the Compulsory Purchase Act 1965 ss 18-19; note 8; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 707-710.

10   See the Compulsory Purchase Act 1965 s 20; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 699.

11   See the Compulsory Purchase Act 1965 Sch 4; and **COMMONS** vol 13 (2009) PARAS 484-486.

12   See the Compulsory Purchase Act 1965 s 22; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 648-650.

13   See the Compulsory Purchase Act 1965 Sch 5; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 658.

14   See the Compulsory Purchase Act 1965 s 29; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 644.

15   See the Compulsory Purchase Act 1965 s 30; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 618.

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## **525. Entry on land for allotments purchased by agreement.**

A council<sup>1</sup> which has agreed<sup>2</sup> to purchase land<sup>3</sup> for the provision of allotments may in general enter on and take possession of the land in accordance with the provisions of the Compulsory Purchase Act 1965<sup>4</sup>. However, a council which has agreed to purchase land subject to the interest of a yearly tenant<sup>5</sup> may, at any time after such agreement has been made and after giving not less than 14 days' notice to the person in possession, enter on and take possession of the land or such part thereof as is specified in the notice to treat, without previous consent<sup>6</sup>. The exercise of this power is subject to the payment of compensation to the person in possession of the land<sup>7</sup>. If the notice of entry relates to land on which there is a dwelling house, and the length of notice is less than three calendar months, the occupier of the dwelling house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal to an arbitrator against the notice, and the council will not be entitled to enter on the land except on such date and on such conditions as the arbitrator may award<sup>8</sup>.

1 The local authorities empowered to purchase land for the purpose of providing allotments are district, parish, or London borough councils, or, in Wales, community, county or county borough councils: see PARA 523; and as to the local authorities which may be concerned with the provision of allotments generally, see PARA 520. As to the meaning of 'allotment' see PARA 510.

2 See for the purposes of the Small Holdings and Allotments Act 1908.

3 See PARA 523. As to the meaning of 'land' see PARA 324 note 5.

4 Small Holdings and Allotments Act 1908 s 38 (amended by the Compulsory Purchase Act 1965 s 38(1), Sch 6; and the Statute Law (Repeals) Act 1993); see PARA 524. The relevant provisions are the Compulsory Purchase Act 1965 ss 11-13; see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq.

5 See a person in possession of the land whose interest is not greater than that of a tenant for a year, or from year to year.

6 Land Settlement (Facilities) Act 1919 s 2(2).

7 Land Settlement (Facilities) Act 1919 s 2(2). The compensation payable is such amount, with interest, as would have been payable if the council had been authorised to purchase the land compulsorily and the person in possession had, in pursuance of such a power, been required to quit possession before the expiration of his term or interest in the land (but without the necessity of compliance with the Lands Clauses Consolidation Act 1845 ss 84-90 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 638-644)): Land Settlement (Facilities) Act 1919 s 2(2).

8 Land Settlement (Facilities) Act 1919 s 2(3). Any such appeal is determinable by an arbitrator under and in accordance with the Agricultural Holdings Act 1986, except that, in default of agreement, the arbitrator must be appointed by the President of the Royal Institution of Chartered Surveyors: Land Settlement (Facilities) Act 1919 s 2(3) (amended by the Agricultural Holdings Act 1986 Sch 14). As to arbitration under the Agricultural Holdings Act 1986 see PARA 469 et seq. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

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### *(b) Lease or Hire*

#### **526. Local authorities' power to take land for allotments on lease.**

The council of any district, parish, or London borough, or, in Wales, any community, county or county borough<sup>1</sup>, may, for the purpose of providing allotments<sup>2</sup>, by agreement take on lease land<sup>3</sup>, whether situated within or without its area<sup>4</sup>.

1 The Small Holdings and Allotments Act 1908 s 25(1) refers to 'the council of a borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the meaning of 'land' see PARA 324 note 5.

4 Small Holdings and Allotments Act 1908 s 25(1). For the power of entry onto land agreed to be hired see PARA 529. As to compensation for improvements at the determination of the tenancy see PARAS 580, 581. Acquisitions of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1); and as to the Secretary of State and the Welsh Ministers see PARA 643. Local authorities may also take on lease for allotments land held by county councils for the purposes of smallholdings: see PARA 491.

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## **527. Leases for allotments purposes by limited owners.**

Any person having power to lease land<sup>1</sup> for agricultural<sup>2</sup> purposes for a limited term<sup>3</sup>, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any), lease land to the council of any district, parish, or London borough, or, in Wales, community, county or county borough<sup>4</sup> for the purposes of allotments<sup>5</sup> for a term not exceeding 35 years, either with or without such rights of renewal as are conferred<sup>6</sup> in the case of land hired compulsorily for those purposes<sup>7</sup>. A tenant for life may make a lease of settled land for any term of years absolute for a nominal rent, or for less than the best rent obtainable, or gratuitously, for the purposes of the Small Holdings and Allotments Acts 1908 to 1931<sup>8</sup>, but, except under a court order, not more than two acres in a district, or ten acres in a parish may be leased unless full consideration is paid or reserved for the excess<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 As to the meaning of 'agriculture' for these purposes see PARA 324 note 5.

3 Eg a mortgagor or mortgagee in possession (see the Law of Property Act 1925 s 99(1), (2), (3)(i); and **MORTGAGE** vol 77 (2010) PARA 346 et seq) or a tenant of settled land (see the Settled Land Act 1925 ss 41-43, 57; and **SETTLEMENTS** vol 42 (Reissue) PARAS 837-841).

4 The Small Holdings and Allotments Act 1908 refers here to 'a council', but this should be construed as a reference to the authorities referred to in the text (ie the local authorities empowered to acquire land for the purposes of that Act). As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

5 As to the meaning of 'allotment' see PARA 510.

6 Ie by the Small Holdings and Allotments Act 1908 (see PARA 543).

7 Small Holdings and Allotments Act 1908 s 40(1) (amended by the Agriculture Act 1970 Sch 5 Pt III). The provisions of the Law of Property Act 1922 providing for the conversion of perpetually renewable leases into long terms (see s 145, Sch 15 para 1; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 541) do not affect the power conferred by the Small Holdings and Allotments Act 1908 s 40 to grant leases with a similar right of renewal: Law of Property Act 1922 Sch 15 para 9. Acquisitions of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small



Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). As to the Secretary of State and the Welsh Ministers see PARA 643.

8 See the Settled Land Act 1925 s 57(2); and **SETTLEMENTS** vol 42 (Reissue) PARA 831. As to the Small Holdings and Allotments Acts 1908 to 1931 see PARA 488 note 3.

9 Settled Land Act 1925 s 57(2) proviso.

## **UPDATE**

### **527 Leases for allotments purposes by limited owners**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### **528. Leases for allotments purposes of Duchy of Cornwall land.**

The like powers of leasing as may be exercised by limited owners<sup>1</sup> may be exercised, in the case of land<sup>2</sup> forming part of the possessions of the Duchy of Cornwall<sup>3</sup>, by the Duke of Cornwall or other persons for the time being empowered to dispose of land belonging to that Duchy<sup>4</sup>.

1 See PARA 527.

2 As to the meaning of 'land' see PARA 324 note 5.

3 As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

4 Small Holdings and Allotments Act 1908 s 40(2) (amended by the Crown Estate Act 1961 Sch 3 Pt II; and the Duchy of Lancaster Act 1988 Schedule). Similar provisions relating to the Duchy of Lancaster and to glebe land have been repealed (although note that land in the Duchy of Lancaster may still be sold for the purpose of allotments (see PARA 523), but may not in general be compulsorily acquired (see PARA 546)).

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### **529. Entry on land for allotments hired by agreement.**

Where an agreement for the hiring of land<sup>1</sup> has been made<sup>2</sup>, the council entitled to hire the land<sup>3</sup> may, at any time and on giving not less than 14 days' notice to each owner, lessee and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the agreement without previous consent or compliance with the statutory

provisions relating to entry on land compulsorily acquired<sup>4</sup>. The exercise of this power is subject to the payment of compensation<sup>5</sup>. Where a council has agreed to hire land subject to the interest of a yearly tenant<sup>6</sup> it may, at any time after such agreement has been made and after giving not less than 14 days' notice to the person in possession, enter on and take possession of the land or such part thereof as is specified in the agreement, without previous consent<sup>7</sup>. The exercise of this power is also subject to the payment of compensation to the person in possession of the land<sup>8</sup>.

If the notice of entry relates to land on which there is a dwelling house, and the length of notice is less than three calendar months, the occupier of the dwelling house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal to an arbitrator against the notice, and the council will not be entitled to enter on the land except on such date and on such conditions as the arbitrator may award<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 I.e. under the Small Holdings and Allotments Act 1908 (see PARA 526 et seq).

3 I.e. a district, parish, or London borough council, or, in Wales, a community, county or county borough council: see PARA 526. As to the local authorities under a duty to provide allotments: see PARA 520.

4 Land Settlement (Facilities) Act 1919 s 2(2), (4); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(1)(a). The statutory provisions relating to entry on land compulsorily acquired are the Lands Clauses (Consolidation) Act 1845 ss 84-90 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 638-644).

5 Land Settlement (Facilities) Act 1919 s 2(2). The compensation payable is such amount, with interest, as would have been payable if the Lands Clauses (Consolidation) Act 1845 ss 84-90 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 638-644) had been complied with, and must include such compensation by way of rent or otherwise, together with interest on such part of the compensation as is not paid by way of rent at the rate of 5% per annum from the time of entry on the land until such compensation is paid, as would have been payable if the council had at the date of entry hired the land of which possession is taken and extinguished the interest therein of any existing tenant: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(2). In this context 'existing tenant', in relation to any land proposed or authorised to be hired, means a tenant thereof under a lease for a term no greater than the term for which the land is proposed or authorised to be hired; and 'lease' includes an agreement for a lease: reg 27.

6 I.e. a person in possession of the land whose interest is not greater than that of a tenant for a year, or from year to year.

7 Land Settlement (Facilities) Act 1919 s 2(2), (4).

8 Land Settlement (Facilities) Act 1919 s 2(2), (4). The compensation payable is such amount, with interest, as would have been payable if the council had been authorised to hire the land compulsorily and the person in possession had, in pursuance of such a power, been required to quit possession before the expiration of his term or interest in the land (but without the necessity of compliance with the Lands Clauses Consolidation Act 1845 ss 84-90): Land Settlement (Facilities) Act 1919 s 2(2), (4); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(1)(a).

9 Land Settlement (Facilities) Act 1919 s 2(3) (as originally enacted), (4). Any such appeal is determinable by an arbitrator under and in accordance with the Agricultural Holdings Act 1986, except that, in default of agreement, the arbitrator must be appointed by the President of the Royal Institution of Chartered Surveyors: Land Settlement (Facilities) Act 1919 s 2(3) (amended by the Agricultural Holdings Act 1986 Sch 14). As to arbitration under the Agricultural Holdings Act 1986 see PARA 469 et seq. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

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### 530. Acquisition of land for field garden allotments.

The council of any district, parish, or London borough, or, in Wales, community, county or county borough<sup>1</sup>, may, for the purpose of providing field gardens<sup>2</sup>, by agreement take on lease land<sup>3</sup>, whether situated within or without its area, or may purchase such land compulsorily<sup>4</sup>.

1 The Small Holdings and Allotments Act 1908 s 25(1) refers to 'the council of a borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to field garden allotments see PARA 512.

3 As to the meaning of 'land' see PARA 324 note 5. As to the hiring of land by agreement see PARAS 526-529.

4 Small Holdings and Allotments Act 1908 s 25(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Sch 4; and the Acquisition of Land Act 1981 s 34; and by virtue of the Local Government Act 1972 s 179). Any purchase so made must be in accordance with the provisions of the Small Holdings and Allotments Act 1908, the Compulsory Purchase Act 1965 Pt I (ss 1-32) and the Acquisition of Land Act 1981: Small Holdings and Allotments Act 1908 ss 25(1) (as so amended); Compulsory Purchase Act 1965 s 1(1) (substituted by the Acquisition of Land Act 1981 Sch 4 para 14(1), (2)). As to compulsory purchase see PARAS 531-533; and **COMPULSORY ACQUISITION OF LAND**.

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## (B) COMPULSORY ACQUISITION

### (a) Purchase

#### UPDATE

### 530 Acquisition of land for field garden allotments

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### 531. Compulsory purchase for allotments generally.

The council of any district, parish, or London borough, or, in Wales, any community, county or county borough<sup>1</sup> may compulsorily purchase land<sup>2</sup>, whether situated within or without its area, for the purposes of providing allotments<sup>3</sup>. Where such an authority proposes to purchase land compulsorily it may be authorised to do so by the Secretary of State or the Welsh Ministers<sup>4</sup>.

Any question of disputed compensation is determinable by the Lands Tribunal<sup>5</sup>. In determining the amount of any disputed compensation no additional allowance may be made on account of the purchase being compulsory<sup>6</sup>.

1 The Small Holdings and Allotments Act 1908 s 25(1) refers to 'the council of a borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5. As to the procedure for compulsory purchase see PARA 532. As to the land which may and may not be compulsorily acquired see PARA 546. As to the matters influencing decisions on the making of compulsory acquisition orders see PARA 547. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

3 Small Holdings and Allotments Act 1908 s 25(1). As to the meaning of 'allotment' see PARA 510. As to the time limits within which notices to treat for the purposes of compulsory purchase must be served, and the circumstances in which notices may be withdrawn, see PARA 549. As to powers of entry on land proposed to be compulsorily acquired see PARA 533.

4 Small Holdings and Allotments Act 1908 s 39(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946; and SI 1955/554); Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). The Small Holdings and Allotments Act 1908 s 39(1) refers to 'a council' but this should be construed as a reference to the local authorities empowered to acquire land compulsorily, that is to say, those referred to in the text. As to the Secretary of State and the Welsh Ministers see PARA 643.

5 See the Land Compensation Act 1961 s 1; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 718.

6 Small Holdings and Allotments Act 1908 s 39(5). See further the Land Compensation Act 1961 s 5(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 754.

## UPDATE

### 531 Compulsory purchase for allotments generally

TEXT AND NOTE 5--Reference to the Lands Tribunal is now to the Upper Tribunal: Land Compensation Act 1961 s 1 (amended by SI 2009/1307).

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### 532. Procedure for compulsory purchase for allotments purposes.

The procedure for the compulsory purchase of land for the purposes of allotments<sup>1</sup> is principally governed by the Compulsory Purchase Act 1965<sup>2</sup> and the Acquisition of Land Act 1981<sup>3</sup>. The relevant provisions of the Compulsory Purchase Act 1965<sup>4</sup> make provision as to the persons empowered to sell their interests<sup>5</sup>, the time limits within which powers of compulsory purchase must be exercised<sup>6</sup>, the service of notices to treat<sup>7</sup>, the payment of compensation for severance or division or injurious affection<sup>8</sup>, the payment of compensation where the title to the land is in doubt<sup>9</sup>, powers of entry<sup>10</sup>, the purchase or redemption of special interests in the land such as mortgages<sup>11</sup>, the release of the land from rentcharges and, in the case of divided land, the apportionment of rents<sup>12</sup>, the compensation of tenants at will<sup>13</sup>, compensation for the purchase of common land<sup>14</sup>, the purchase of, or payment of compensation for, land inadvertently omitted from the purchase<sup>15</sup>, conveyancing costs<sup>16</sup>, procedural irregularities<sup>17</sup>, the service of notices<sup>18</sup>, and the payment of compensation for the purchase of, or damage to, ecclesiastical property<sup>19</sup>. The Acquisition of Land Act 1981 makes provision for the issue, notification, advertisement and confirmation of compulsory purchase orders<sup>20</sup>, the administration of such orders in relation to certain land acquired by statutory undertakers, National Trust land, and land forming part of a common or open space<sup>21</sup>, the questioning of the validity of compulsory purchase orders<sup>22</sup>, the compulsory acquisition of rights over certain land (generally land which has been acquired by statutory undertakers) by way of the creation of new rights<sup>23</sup>, the extinguishment of certain public rights of way<sup>24</sup>, the exception of minerals from purchases<sup>25</sup>, and general provisions as to compensation, inquiries and the service of documents<sup>26</sup>.

A compulsory purchase must also be in accordance with the relevant provisions of the Small Holdings and Allotments Act 1908<sup>27</sup>.

1 As to the compulsory purchase of land for the purposes of allotments see PARA 531. As to the meaning of 'land' see PARA 324 note 5. As to the meaning of 'allotment' see PARA 510.

2 Compulsory Purchase Act 1965 s 1(1) (substituted by the Acquisition of Land Act 1981 Sch 4 para 14(1), (2)).

3 Small Holdings and Allotments Act 1908 s 25(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Sch 4; and by the Acquisition of Land Act 1981 s 34); Acquisition of Land Act 1981 s 1(1) (b), (2).

4 See the Compulsory Purchase Act 1965 Pt I (ss 1-32).

5 See the Compulsory Purchase Act 1965 ss 2, 3, Sch 1; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 553.

6 See the Compulsory Purchase Act 1965 s 4; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 617.

7 See the Compulsory Purchase Act 1965 ss 5-6; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 616.

8 See the Compulsory Purchase Act 1965 ss 7-8, 10; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 628-630, 718.

9 See the Compulsory Purchase Act 1965 ss 9, 25, 26, 28; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 661 et seq.

10 See the Compulsory Purchase Act 1965 ss 11-13; PARA 533; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq.

11 See the Compulsory Purchase Act 1965 ss 14-17; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 711-714. Any expenses incurred by a council in the purchase or redemption of any quit rent, chief rent, tithe, or other rentcharge, or other perpetual annual sum issuing out of acquired land, is deemed to have been incurred in the purchase of the land: Small Holdings and Allotments Act 1908 s 61(3) (amended by the Statute Law (Repeals) Act 1964; and the Statute Law (Repeals) Act 1993).

12 See the Compulsory Purchase Act 1965 ss 18-19; note 11; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 707 et seq.

13 See the Compulsory Purchase Act 1965 s 20; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 700.

14 See the Compulsory Purchase Act 1965 s 21, Sch 4; and **COMMONS** vol 13 (2009) PARA 484 et seq.

15 See the Compulsory Purchase Act 1965 s 22; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 648 et seq.

16 See the Compulsory Purchase Act 1965 s 23, Sch 5; and **SALE OF LAND** vol 42 (Reissue) PARA 265.

17 See the Compulsory Purchase Act 1965 s 29; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 644.

18 See the Compulsory Purchase Act 1965 s 30; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 618.

19 See the Compulsory Purchase Act 1965 s 31; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 668.

20 See the Acquisition of Land Act 1981 ss 2, 10-15; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 557 et seq.

21 See the Acquisition of Land Act 1981 Pt III (ss 16-22); and **COMPULSORY ACQUISITION OF LAND**.

22 See the Acquisition of Land Act 1981 Pt IV (ss 23-27); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 612 et seq.

23 See the Acquisition of Land Act 1981 Pt V (ss 28-31); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 606 et seq.

24 See the Acquisition of Land Act 1981 Pt VI (ss 32-33); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 806.

25 See the Acquisition of Land Act 1981 s 3, Sch 2; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 137 et seq.

26 See the Acquisition of Land Act 1981 ss 4-6; and **COMPULSORY ACQUISITION OF LAND**.

27 Small Holdings and Allotments Act 1908 s 25(1) (as amended: see note 3). The provisions referred to in the text are ss 39, 41-43, 45 (see PARAS 531, 535 et seq).

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### **533. Entry on land compulsorily purchased for allotments.**

A district, parish, or London borough council, or, in Wales, a community, county or county borough council<sup>1</sup> which has agreed<sup>2</sup> to purchase land<sup>3</sup> compulsorily for the provision of allotments may in general enter on and take possession of the land in accordance with the provisions of the Compulsory Purchase Act 1965<sup>4</sup>. Where, however, a council has agreed to purchase land compulsorily subject to the interest of a yearly tenant<sup>5</sup> it may, at any time after such agreement has been made and after giving not less than 14 days' notice to the person in possession, enter on and take possession of the land or such part thereof as is specified in the notice to treat without previous consent<sup>6</sup>. The exercise of this power is subject to the payment of compensation to the person in possession of the land<sup>7</sup> together with interest at the rate currently prescribed<sup>8</sup>.

If a notice of entry relates to land on which there is a dwelling house, and the length of notice is less than three calendar months, the occupier of the dwelling house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal to an arbitrator against the notice, and the council will not be entitled to enter on the land except on such date and on such conditions as the arbitrator may award<sup>9</sup>.

1 Ie the local authorities empowered to purchase land compulsorily for the purpose of providing allotments: see PARAS 531-532. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520. As to the meaning of 'allotment' see PARA 510.

2 Ie for the purposes of the Small Holdings and Allotments Act 1908.

3 As to the meaning of 'land' see PARA 324 note 5.

4 Compulsory Purchase Act 1965 s 1(1) (substituted by the Acquisition of Land Act 1981 Sch 4 para 14(1), (2)). The relevant provisions are the Compulsory Purchase Act 1965 ss 11-13; see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq. A council which has entered on the land by virtue of s 11(1) is not entitled to withdraw the notice to treat in accordance with the Small Holdings and Allotments Act 1908 s 39(8); Land Settlement (Facilities) Act 1919 s 2(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Sch 4, and by the Acquisition of Land Act 1981 Sch 4 para 2).

5 Ie a person in possession of the land whose interest is not greater than that of a tenant for a year, or from year to year.

6 Land Settlement (Facilities) Act 1919 s 2(2).

7 Land Settlement (Facilities) Act 1919 s 2(2). The compensation payable is such amount, with interest, as would have been payable if the council had been authorised to purchase the land compulsorily and the person in possession had, in pursuance of such a power, been required to quit possession before the expiration of his term or interest in the land (but without the necessity of compliance with the Lands Clauses Consolidation Act 1845 ss 84-90 (as to which see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 638-644)): Land Settlement (Facilities) Act 1919 s 2(2).

8 See the Land Compensation Act 1961 s 32(1); the Acquisition of Land (Rate of Interest after Entry) Regulations 1995, SI 1995/2262; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 641.

9 Land Settlement (Facilities) Act 1919 s 2(3) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Sch 4). Any such appeal is determinable by an arbitrator under and in accordance with the Agricultural Holdings Act 1986, except that, in default of agreement, the arbitrator must be appointed by the President of the Royal Institution of Chartered Surveyors: Land Settlement (Facilities) Act 1919 s 2(3) (amended by the Agricultural Holdings Act 1986 Sch 14). As to arbitration under the Agricultural Holdings Act 1986 see PARA 469 et seq. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

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### *(b) Lease or Hire*

#### **534. Compulsory hiring of land for allotments.**

The only remaining circumstances under which land may be compulsorily hired for allotments<sup>1</sup> are where a district council or, in Wales, a county or county borough council<sup>2</sup>, proposes to hire land compulsorily for the purpose of leasing it to a parish or community council for allotments<sup>3</sup>.

1 As to the meaning of 'land' see PARA 324 note 5. As to the meaning of 'allotment' see PARA 510. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

2 I.e. the local authorities empowered to hire land compulsorily on behalf of parishes or communities, that is to say, those referred to in the Land Settlement (Facilities) Act 1919 s 17: see note 3; and PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

3 I.e. under the Land Settlement (Facilities) Act 1919 s 17: see PARA 550. By virtue of the amendments effected to the Small Holdings and Allotments Act 1908 s 25 by the Acquisition of Land (Authorisation Procedure) Act 1946 and the Acquisition of Land Act 1981, a local authority has no power of compulsory hiring for the purpose of allotments under the Small Holdings and Allotments Act 1908, and the provisions as to compulsory hiring in that Act accordingly apply only to district, county or county borough councils acquiring land for letting to parish or community councils for allotments under the Land Settlement (Facilities) Act 1919 s 17 (see PARA 550). As to parish and community councils see PARA 520 notes 2, 4. Acquisitions of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). As to the Secretary of State and the Welsh Ministers see PARA 643.

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#### **535. Compulsory hiring orders for allotments purposes.**

When a council<sup>1</sup> proposes to hire land<sup>2</sup> compulsorily<sup>3</sup> it may submit to the Secretary of State or the National Assembly for Wales<sup>4</sup> an order for the compulsory hiring of the land specified in the order for a period of not less than 14 and not more than 35 years<sup>5</sup>.

1 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534. As to the meaning of 'allotment' see PARA 510. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the matters influencing decisions on the making of compulsory acquisition orders see PARA 547. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

3 le for the purpose of leasing it to a parish or community council for allotments under the Land Settlement (Facilities) Act 1919 s 17 (see PARA 550).

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 Small Holdings and Allotments Act 1908 s 39(2). As to the time limits within which notices to treat for the purposes of compulsory purchase must be served, and the circumstances in which notices may be withdrawn, see PARA 549.

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### **536. Form and content of compulsory hiring orders for allotments purposes.**

A compulsory hiring order<sup>1</sup> must be in the prescribed form, or to the like effect<sup>2</sup>, and must incorporate such provisions as the Secretary of State or the Welsh Ministers<sup>3</sup> may prescribe for the purpose of carrying it into effect and of protecting the council<sup>4</sup> and the persons interested in the land<sup>5</sup>. The order must also incorporate any regulations made by the Secretary of State or the Welsh Ministers<sup>6</sup> and must determine the terms and conditions of the hiring other than the rent<sup>7</sup>. The order must be published and advertised by the council, and notice of it must be given to parties affected<sup>8</sup>. Subsequently the order will be confirmed<sup>9</sup> unless an objection<sup>10</sup> to the order is lodged and persisted in, in which event the Secretary of State or the Welsh Ministers must hold a public inquiry in the locality<sup>11</sup>.

1 le an order for the compulsory hiring of land for allotments: see PARA 535.

2 Small Holdings and Allotments Act 1908 Sch 1 Pt I(1); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 1. The form itself is set out in the Appendix.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 In practice this is a reference to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534. As to the meaning of 'allotment' see PARA 510.

5 Small Holdings and Allotments Act 1908 Sch 1 Pt I(1). As to the meaning of 'land' see PARA 324 note 5; note that for the purposes of the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, 'land' includes stints and other alienable common rights of grazing (reg 27). As to the acquisition of common rights see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 609. As to stinted pasture see **COMMONS** vol 13 (2009) PARA 417. As to the land which may and may not be compulsorily acquired for



allotments see PARA 546. As to the matters influencing decisions on the making of compulsory acquisition orders see PARA 547. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

6 Small Holdings and Allotments Act 1908 Sch 1 Pt II(1); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 28. By way of such incorporation the order may also incorporate in adapted form certain provisions of the Lands Clauses Acts and the Railways Clauses Consolidation Act 1845 ss 77-85: see the Small Holdings and Allotments Act 1908 Sch 1 Pt I(1), Pt II(1); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 28. 'The Lands Clauses Acts' means the Lands Clauses Consolidation Act 1845, the Lands Clauses Consolidation Acts Amendment Act 1850, and any other Act for the time being in force amending those Acts: Interpretation Act 1978 s 5, Sch 1. As to the Lands Clauses Acts see **COMPULSORY ACQUISITION OF LAND**. As to the Railways Clauses Consolidation Act 1845 ss 77-85 see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 144 et seq.

7 Small Holdings and Allotments Act 1908 Sch 1 Pt II(2). In particular, the order must provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner, and to pay to the landlord, at the determination of the tenancy on the council quitting the land, compensation for depreciation, and, unless otherwise agreed, to keep the buildings and premises in repair: Sch 1 Pt II(2)(a). Where land is compulsorily hired the council must be allowed a reasonable time in which to remedy breaches of covenant: *Hopley v Tarvin Parish Council* (1910) 74 JP 209. The order must not authorise the breaking up of pasture unless this can be done without depreciating the value of the land or the circumstances are such that allotments cannot otherwise be successfully cultivated: Small Holdings and Allotments Act 1908 Sch 1 Pt II(2)(b) (amended by the Land Settlement (Facilities) Act 1919 s 25(1), Sch 2) (although see, in connection with allotment gardens, PARA 537 text and notes 5-7). The order must not, except with the landlord's consent, confer on the council any right to fell or cut timber or trees, or any right to take, sell or carry away any minerals, gravel, sand or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for allotments, and except upon payment of compensation for minerals, gravel, sand or clay so used: Small Holdings and Allotments Act 1908 Sch 1 Pt II(2)(c). The order may provide for the continuance or creation of easements over the land authorised to be acquired: see PARA 548. As to the payment of compensation and rent on compulsory hiring see PARA 540. As to the meaning of 'cultivation' see PARA 324 note 5. 'Landlord' in relation to land compulsorily hired means the person for the time being entitled to receive the rent from the council: s 61(1). Provision is made for the construction of any enactment incorporated with an order: see Sch 1 Pt I(7). Provision is also made in connection with the acquisition of ecclesiastical lands: see Sch 1 Pt I(8) (substituted by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 1); the Endowments and Glebe Measure 1976 ss 15, 20; the Church Commissioners Measure 1947 ss 1, 2; the Ecclesiastical Leasing Act 1858 s 2; and **ECCLESIASTICAL LAW**.

8 See the Small Holdings and Allotments Act 1908 Sch 1 Pt I(2); and the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, regs 2, 3, 17, 24. Any notice required by the Small Holdings and Allotments Act 1908 to be given may be sent by registered post: s 61(5). An order may, on the application of any interested party, make provision to secure the interest of any party other than the owner or existing tenant in any compensation payable in respect of the compulsory hiring: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 5(2). In this context 'owner', in relation to any land proposed or authorised to be hired, means the person who by himself or his agent is in actual possession, or receipt of the rents and profits, of the land (except a tenant thereof under a lease for a term no greater than the term for which the land is proposed or authorised to be hired) and that without regard to the real amount of interest of such person: reg 27. As to the meaning of 'existing tenant' and 'lease' see PARA 529 note 5.

9 As to confirmation see PARA 538.

10 Objections must be presented to the Secretary of State or the Welsh Ministers and, if required by the notice, a copy sent to the clerk to the council, within one calendar month from the date on which the notice was sent to the objector or, if no notice was sent to him, from the date of the latest advertisement: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936 SR & O 1936/196, regs 2(3), 4.

11 Small Holdings and Allotments Act 1908 Sch 1 Pt I(3), (4). As to inquiries see PARA 649.

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### **537. Compulsory hiring of pasture land in connection with allotments.**

No order may be made authorising the compulsory hiring for the purpose of allotments<sup>1</sup> of land<sup>2</sup> which at the date of the order is pasture land, if it is proved to the satisfaction of the Secretary of State or the Welsh Ministers<sup>3</sup> that arable land which is equally suitable for the purpose is reasonably available for hiring by the council<sup>4</sup>. An order authorising the compulsory hiring of land for the provision of allotment gardens<sup>5</sup> may authorise the breaking up of pasture<sup>6</sup>, but in other cases the order may not authorise the breaking up of pasture unless the Secretary of State or the Welsh Ministers is or are satisfied that it can be broken up without depreciating the value of the land, or that the circumstances are such that allotments cannot otherwise be successfully cultivated<sup>7</sup>.

1     Ie the compulsory hiring by district councils (in England) or county or county borough councils (in Wales) for letting to parish or community councils under the Land Settlement (Facilities) Act 1919 s 17: see PARA 550. As to the meaning of 'allotment' see PARA 510.

2     As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the matters influencing decisions on the making of compulsory acquisition orders see PARA 547. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

3     As to the Secretary of State and the Welsh Ministers see PARA 643.

4     Allotments Act 1922 s 8(4).

5     As to the meaning of 'allotment garden' see PARA 324 note 11.

6     See the Allotments Act 1922 s 8(5), which provides that the Small Holdings and Allotments Act 1908 Sch 1 Pt II(2)(b) (which restricts the breaking up of pasture compulsorily hired: see the text and note 7), does not apply to land compulsorily hired for the provision of allotment gardens.

7     Small Holdings and Allotments Act 1908 Sch 1 Pt II(2)(b) (amended by the Land Settlement (Facilities) Act 1919 Sch 2). As to the meaning of 'cultivation' see PARA 324 note 5. The meaning of 'successfully cultivated' was discussed in *Knowles v Salford Corp* [1922] 1 Ch 328 at 344, CA, per Warrington LJ.

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### **538. Confirmation of compulsory hiring order for allotments purposes.**

A compulsory hiring order<sup>1</sup> is not effective unless and until it is confirmed by the Secretary of State or the Welsh Ministers<sup>2</sup>, who may confirm it with or without modifications<sup>3</sup>. Confirmation is conclusive evidence that applicable legislative requirements have been complied with and that the order has been duly made and is within the hiring authority's statutory powers<sup>4</sup>. Notice of confirmation of the order must be given to each owner, occupier and lessee<sup>5</sup>.

In confirming an order, the Secretary of State or the Welsh Ministers must have regard to the same considerations regarding the effect of the order on existing holdings and the affected area generally as a council<sup>6</sup> making an order is required to have regard<sup>7</sup>.

1     Ie an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535. As to the compulsory hiring of land for the purposes of allotments generally see PARA 534. As to the meaning of 'land' see PARAS 324 note 5, 536 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548. As to the meaning of 'allotment' see PARA 510.

2     As to the Secretary of State and the Welsh Ministers see PARA 643.

3 See the Small Holdings and Allotments Act 1908 s 39(3) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Sch 4; and the Statute Law (Repeals) Act 1986). Notices to treat must be served within three months of the confirmation of the order: see PARA 549. Confirmation of the order enables a council to enter on and take possession of the land proposed to be compulsorily hired: see PARA 545.

4 Small Holdings and Allotments Act 1908 s 39(3) (as amended: see note 3). The validity of a confirmed order cannot be challenged: see *Ex p Ringer* (1909) 73 JP 436; but see *Minister of Health v R, ex p Yaffe* [1931] AC 494, HL, where it was held that a scheme unauthorised by the Housing Act 1925 (repealed) could not be made law by an order of the minister which, under that Act, was to have statutory effect. See also the general principle laid down in *Frewin v Lewis* (1838) 4 My & Cr 249 at 254 per Lord Cottenham LC. Where a council neglected to comply with the condition precedent of endeavouring to obtain suitable land by agreement before making an order (see the Compulsory Purchase Act 1965 s 5; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 616), an injunction restraining it from proceeding was refused while an inquiry was pending: *Reddaway v Lancashire County Council* (1925) 41 TLR 422.

5 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 5(1). Provision is made for the service of notices: see reg 24. As to the meaning of 'owner' see PARA 536 note 8.

6 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534.

7 See the Small Holdings and Allotments Act 1908 s 41(2); and PARA 547.

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### **539. Enforcement of compulsory hiring order for allotments purposes.**

A council<sup>1</sup> requiring to hire compulsorily<sup>2</sup> any land<sup>3</sup> authorised to be hired by a compulsory hiring order<sup>4</sup> must, within three calendar months after the date on which the order is confirmed<sup>5</sup>, give notice to that effect<sup>6</sup> to the owner<sup>7</sup> of such land, and to any existing tenant<sup>8</sup> thereof, or to such of those parties as may, after diligent inquiry, be known to the council, demanding from those parties the particulars of their estate and interest in the land, in so far as such particulars are required in order to ascertain the owner thereof and the interests of the existing tenants (if any)<sup>9</sup>. On receipt of the particulars of the interest of an existing tenant, the council must, within 21 days, give notice to the tenant stating whether the council desires to extinguish his interest<sup>10</sup> or to hire the land subject to it<sup>11</sup>. If the council fails to give such notice it is deemed to desire to extinguish the interest<sup>12</sup>.

1 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534. As to the meaning of 'allotment' see PARA 510.

2 I.e. by way of an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535.

3 As to the meaning of 'land' see PARAS 324 note 5, 536 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

4 I.e. an order under the Small Holdings and Allotments Act 1908 s 39(2).

5 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 6(3). As to confirmation of a compulsory hiring order see PARA 538.

6 The council must state in every such notice the particulars of the land required to be hired; the term for which the council is authorised to hire it; the council's willingness to treat for the hiring; and a date consistent with the terms of the order on which it requires the tenancy to commence: Small Holdings and Allotments

(Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 6(1). Provision is made for the service of notices: see reg 24.

7 As to the meaning of 'owner' see PARA 536 note 8. Where the owner is a tenant the council must also give notice, within three calendar months after the date on which the order is confirmed, to the person in receipt of the rent reserved under the lease under which the owner holds as tenant that it requires to hire compulsorily the lands specified in the notice: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 6(2), (3). As to the meaning of 'lease' see PARA 529 note 5.

8 As to the meaning of 'existing tenant' see PARA 529 note 5.

9 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 6(1). Special provision is made for the determination of the rent, compensation, and other matters where the council cannot after diligent inquiry ascertain the owner or existing tenant, or where the owner or tenant fails to state the particulars demanded by the notice to treat or fails to treat with the council in respect of his interest: see reg 11; and as to the determination of rent and compensation see PARA 540. Costs reasonably incurred by an owner or existing tenant in furnishing any particulars of his estate or interest must be paid by the council: reg 17(1). In the event of disagreement as to costs, the council must pay such costs as may be authorised: see reg 17(2).

10 Any interest of an existing tenant which is extinguished under the powers conferred by a compulsory order is extinguished upon, and by reason of, the commencement of the tenancy of the council: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 7. Provision is made for the calculation and payment of compensation to an existing tenant whose interest is extinguished, subject to the provision of proof of such an interest: see regs 8, 10, 21. 'Compulsory order' means an order under the Small Holdings and Allotments Acts 1908 to 1931 and the Allotments Acts 1922 and 1925 which authorises land to be compulsorily hired: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 27.

11 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 7. Provision is made for the service of notices: see reg 24.

12 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 7.

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#### **540. Determination of compensation or rent payable on compulsory hiring for allotments purposes.**

In default of agreement:

- 251 (1) the amount of rent to be paid by a council<sup>1</sup> for land<sup>2</sup> compulsorily hired<sup>3</sup>;
- 252 (2) the amount of any other compensation to be paid by a council to any person entitled to compensation in respect of the land or any interest in it or in respect of improvements executed on it or otherwise<sup>4</sup>; and
- 253 (3) where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of the term<sup>5</sup>,

must be determined by a single valuer<sup>6</sup> appointed by the Secretary of State or the Welsh Ministers<sup>7</sup>. In assessing the value of the hired land the existence of mines and minerals<sup>8</sup> should be disregarded, and only the surface value should be taken into consideration<sup>9</sup>.

Any person interested in the valuation must give the valuer all the assistance, information and explanations he requires and produce to him or give him access to relevant documents, at the council's expense<sup>10</sup>.

1 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534. As to the meaning of 'allotment' see PARA 510.

2 As to the meaning of 'land' see PARAS 324 note 5, 536 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

3 Small Holdings and Allotments Act 1908 Sch 1 Pt II(3)(a). The reference in the text to land compulsorily hired is a reference to land compulsorily hired by way of an order under s 39(2), as to which see PARA 535. As to the compulsory hiring of land for the purposes of allotments generally see PARA 534.

In fixing the rent to be paid for the land compulsorily hired the valuer must take into consideration any rent (if any) at which the land has been let and the annual value of the land for the purposes of income tax or rating, any loss (if any) caused to the owner by severance, the terms and conditions of the hiring (including any reservation of sporting or fishing rights) and all other circumstances connected with the land, but must not make any allowance in respect of any use to which the owner might otherwise have put the land, being a use in respect of which he might resume possession: Sch 1 Pt II(4). As to resuming possession see PARA 544. In fixing the rent the valuer must also take into consideration the interest of any existing tenant and the existence of any reservation, exception or easement affecting the land, which must be valued subject to such interest, reservation, exception or easement (Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 13), and must have regard not only to the value of the land but also to any damage to be sustained by the owner of the land by its severance from other land of his, or by reason of other land of his being otherwise injuriously affected (see reg 14(1)). The valuer must, within one month of his appointment (or such extended period as the Secretary of State or the Welsh Ministers may allow), make and sign a determination of all relevant matters determinable at that date and must within one month of the commencement of the council's tenancy (see PARA 541) (or such extended period as the Secretary of State or the Welsh Ministers may allow), make and sign a determination of all outstanding matters: see reg 19. Every such determination must be duly stamped and sent to the council, the owner and any existing tenant affected by it: reg 20. Provision is made for the determination of the rent to be paid by the council in circumstances where the owner of the land would be unable, except under powers conferred by the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, to lease the land: see reg 9.

As to the meaning of 'lease' see PARA 529 note 5. As to the meaning of 'owner' see PARA 536 note 8. As to the meaning of 'existing tenant' see PARA 529 note 5. As to the designation 'tenant' see PARA 510 note 10. As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Small Holdings and Allotments Act 1908 Sch 1 Pt II(3)(b). Provision as to the payment of compensation is made by the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 21.

5 Small Holdings and Allotments Act 1908 Sch 1 Pt II(3)(c). Any compensation awarded to a tenant in respect of the depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the hired land must so far as possible be provided for by taking that compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term: Sch 1 Pt II(5). Every existing tenant is entitled to compensation from the council for the damage done to him in his tenancy by the severance of the hired land from unhired land held by him: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 14(2). See also reg 21.

6 The Acquisition of Land (Assessment of Compensation) Act 1919 s 7(2) (repealed) provided that any matter required by the Small Holdings and Allotments Act 1908 to be determined by a single valuer should be determined by an official arbitration under the Acquisition of Land (Assessment of Compensation) Act 1919 (now repealed). The Lands Tribunal Act 1949 s 1(3)(a)(i) subsequently provided that any question directed to be determined by an official arbitrator was to be referred to and determined by the Lands Tribunal (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 721). However, by the date on which s 1 came into force (1 January 1950: see the Lands Tribunal Act (Appointed Day) Order 1949, SI 1949/2335), the Acquisition of Land (Assessment of Compensation) Act 1919 s 7(2) had been repealed (by the Agriculture Act 1947 s 110, Sch 13) and there was therefore no provision in force requiring reference to an official arbitrator through which the Lands Tribunal could acquire jurisdiction under the Lands Tribunal Act 1949 s 1(3)(a); it is accordingly submitted that the detailed provisions in the text continue to apply. It should however be noted that the Land Compensation Act 1961 s 1 and the Compulsory Purchase Act 1965 s 6 (see **COMPULSORY ACQUISITION OF LAND**) give the Lands Tribunal general power to assess compensation, and the Lands Tribunal Act 1949 s 1(5) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 721) empowers it to act as arbitrator with the parties' consent.

7 Small Holdings and Allotments Act 1908 Sch 1 Pt II(3). A tenant in occupation may, however, by written notice served on the council before the determination of his tenancy, require that any claim by him against the council referable to arbitration under the Agricultural Holdings Act 1986 (see PARA 469 et seq) must be so referred, in which case the claims in question must be determined by arbitration under the Agricultural Holdings Act 1986 and not by valuation under the Small Holdings and Allotments Act 1908: Sch 1 Pt II(3) (proviso)

(amended by the Agricultural Holdings Act 1986 Sch 14 para 3). Additionally, if an owner or existing tenant does not agree with the council as to any matter which under the Small Holdings and Allotments Act 1908 Sch 1 Pt II(3) is in default of such agreement to be determined by a single valuer, the council may require that the rent, compensation or other matter to be determined must be determined in manner provided by the Small Holdings and Allotments Acts 1908 to 1931, and the Allotments Acts 1922 to 1950: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 11. As to the Small Holdings and Allotments Acts 1908 to 1931 see PARA 488 note 3; as to the Allotments Acts 1922 to 1950 see PARA 510 note 2; and as to the provisions of that legislation concerned with compensation see PARAS 566-581. Any notice required by the Small Holdings and Allotments Act 1908 to be served may be sent by registered post: s 61(5).

In assessing compensation the valuer is required to act on his own knowledge and experience, but must also hear any authorities or parties authorised to appear, and witnesses, but must not, except in such cases as the Secretary of State or the Welsh Ministers otherwise direct, hear counsel or expert witnesses: Small Holdings and Allotments Act 1908 Sch 1 Pt I(5) (amended by the Lands Tribunal Act 1949 Sch 2); Allotments Act 1922 s 8(3); Small Holdings and Allotments Act 1926 s 17(3)(b).

8 Subject to any provision in the compulsory hiring order mines and minerals are, unless the owner and council otherwise agree, reserved out of the lease: see the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 22.

9 *Earl of Carlisle v Northumberland County Council* (1911) 105 LT 797.

10 See the Small Holdings and Allotments Act 1908 Sch 1 Pt II(6) (amended by the Land Settlement (Facilities) Act 1919 Sch 2).

## UPDATE

### **540 Determination of compensation or rent payable on compulsory hiring for allotments purposes**

NOTE 6--References to the Lands Tribunal are now to the Upper Tribunal: Lands Tribunal Act 1949 s 1(3), (5) (amended by SI 2009/1307).

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### **541. Execution of lease and commencement of tenancy on compulsory hiring for allotments purposes.**

The owner<sup>1</sup> of land proposed to be compulsorily hired<sup>2</sup> must, on the application of the council<sup>3</sup>, execute a lease of the land in accordance with the compulsory hiring order<sup>4</sup>. If the owner refuses or fails within one month of notification by the council to execute the lease, or if the owner cannot after diligent inquiry be ascertained by the council, the council must execute the lease in duplicate and forward one copy to the owner, if he can be found<sup>5</sup>. A lease so executed by the owner or the council is binding on and enures for the benefit of all persons interested in the hired land, and cannot cause any forfeiture of the land or of any land held with it or create any right of entry on any such land, or any right of action for breach of a covenant not to assign, or like covenant<sup>6</sup>, and takes effect as from the date specified by the council in the notice to treat given by the council to the owner of the land<sup>7</sup>.

1 As to the meaning of 'owner' see PARA 536 note 8.

2 As to the meaning of 'land' see PARAS 324 note 5, 536 note 5. The reference in the text to land compulsorily hired is a reference to land compulsorily hired by way of an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535. As to the compulsory hiring of land for the purposes of allotments

generally see PARA 534. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548. As to the meaning of 'allotment' see PARA 510.

3 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534.

4 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 15(1). A compulsory hiring order is an order under the Small Holdings and Allotments Act 1908 s 39(2). As to the meaning of 'lease' see PARA 529 note 5. A lease must be executed as soon as the amount of the rent to be paid by the council for the land proposed to be compulsorily hired, and the amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise, have been determined (so far as such matters can be determined before the tenancy of the council commences), and is subject to the interest of any existing tenant which the council has notified that it does not desire to extinguish, and to any reservation, exception, or easement subject to which the land is to be hired: reg 15(1). As to the determination of compensation or rent payable on compulsory hiring see PARA 540. As to the meaning of 'existing tenant' see PARA 529 note 5.

Costs reasonably incurred by an owner of land in connection with the preparation and execution of the lease and any counterpart must be paid by the council: reg 17(1). In the event of disagreement as to the amount of such costs, the council must pay such costs as may be authorised: see reg 17(2).

As to leases of compulsorily hired land subject to a mortgage see PARA 542.

5 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 15(1). A lease so executed takes effect as if it had been duly executed by the owner. Provision is made for the service of notices: see reg 24.

6 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 15(2).

7 Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 16. This is subject to the power of the council under the Small Holdings and Allotments Act 1908 s 39(8) (see PARA 549) to withdraw such a notice to treat: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 16 (proviso).

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## **542. Effect of leases of land subject to mortgage compulsorily hired for allotments purposes.**

Where land<sup>1</sup> authorised to be compulsorily hired for allotments<sup>2</sup> is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession will have effect as if it were a lease authorised under the statutory power<sup>3</sup> to be made by the mortgagor or mortgagee in possession<sup>4</sup>.

1 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546.

2 Ie in pursuance of an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535 et seq. As to the compulsory hiring of land for the purposes of allotments generally see PARA 534. As to the meaning of 'allotment' see PARA 510.

3 Ie under the Law of Property Act 1925 s 99 (see **MORTGAGE** vol 77 (2010) PARA 345 et seq).

4 Small Holdings and Allotments Act 1908 s 39(6).

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### **543. Renewal of tenancy after compulsory hiring for allotments purposes.**

Where land<sup>1</sup> has been hired compulsorily<sup>2</sup> for allotments, the council<sup>3</sup> may, by giving to the landlord<sup>4</sup> written notice<sup>5</sup> not more than two years nor less than one year before the expiration of the tenancy, renew the tenancy for such term, not being less than 14 nor more than 35 years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer<sup>6</sup> appointed by the Secretary of State or the Welsh Ministers<sup>7</sup>, but otherwise on the same terms and conditions as the original lease, and so from time to time<sup>8</sup>. If, however, on any such notice being given, the landlord proves to the satisfaction of the Secretary of State or the Assembly that any land included in the tenancy is required for the amenity or convenience of any dwelling house, that land must be excluded from the renewed tenancy<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

2 Le hired by way of an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535. As to the compulsory hiring of land for the purposes of allotments generally see PARA 534. As to the meaning of 'allotment' see PARA 510.

3 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534.

4 As to the meaning of 'landlord' see PARA 536 note 7.

5 Any notice required by the Small Holdings and Allotments Act 1908 to be given may be sent by registered post: s 61(5). Where in pursuance of s 44 a council has given notice to the landlord of land compulsorily hired by it to renew the tenancy, it is lawful for the council to withdraw the notice at any time not less than three months before the expiration of the tenancy if it appears to it that the rent assessed in pursuance of s 44 is such as would involve loss to it, but in any such case the landlord is entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to renew and of the notice to withdraw, such compensation to be determined in like manner as the compensation for withdrawal of notice to treat under s 39(8) (see PARA 549): Small Holdings and Allotments Act 1926 s 18(1).

6 See PARA 540 note 6.

7 As to the Secretary of State and the Welsh Ministers see PARA 643.

8 Small Holdings and Allotments Act 1908 s 44(1). In assessing the rent to be paid under s 44, the valuer must not take into account any increase in the value of the holding:

62 (1) due to improvements in respect of which the council would have been entitled to compensation, if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy (s 44(2)(a));

63 (2) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under the Act (s 44(2)(b)); or

64 (3) due to the establishment by the council of other smallholdings or allotments in the neighbourhood (s 44(2)(c)).

As to the resumption of possession see PARA 544. The valuer must also not take into account any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had quitted the land on the determination of the tenancy: s 44(2).



The provisions of the Law of Property Act 1922 providing for the conversion of perpetually renewable leases into long terms (see s 145, Sch 15 para 1; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 541) do not affect any right of renewal conferred by the Small Holdings and Allotments Act 1908 s 44: Law of Property Act 1922 Sch 15 para 9.

9 Small Holdings and Allotments Act 1908 s 44(1) proviso.

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#### **544. Resumption of possession by landlord after compulsory hiring for allotments purposes.**

Where land<sup>1</sup> has been hired compulsorily<sup>2</sup> for allotments, and the land or any part of it at any time during the council's<sup>3</sup> tenancy is shown to the satisfaction of the Secretary of State or the Welsh Ministers<sup>4</sup> to be required by the landlord<sup>5</sup> to be used for building, mining, or other industrial purposes, or for roads necessary therefor, the landlord may resume possession of the land or part of it<sup>6</sup> upon giving the council 12 months' previous written notice of his intention, or such shorter notice as may be required by the compulsory hiring order<sup>7</sup>.

The notice will not be valid if given before the Secretary of State or the Welsh Ministers is or are satisfied as to the purpose for which the land is required, and where an applicant has failed to satisfy the Secretary of State or the Welsh Ministers that any land is required for such a purpose, no further application with a view to resuming possession of the same land or any part of it for the same purpose can be entertained within two years after the previous application<sup>8</sup>.

On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation is in default of agreement to be determined by arbitration<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546. As to the continuation or creation of easements over land compulsorily acquired see PARA 548.

2 le hired by way of an order under the Small Holdings and Allotments Act 1908 s 39(2), as to which see PARA 535. As to the compulsory hiring of land for the purposes of allotments generally see PARA 534. As to the meaning of 'allotment' see PARA 510.

3 In practice this refers to a district council (in England) or a county or county borough council (in Wales), which are the only councils empowered to hire land compulsorily for allotments: see PARA 534.

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 As to the meaning of 'landlord' see PARA 536 note 7.

6 If a part only of the land is resumed, the rent payable by the council (see PARA 540) will as from the date of resumption be reduced by such sum as in default of agreement may be determined by a valuer appointed by the Secretary of State or the Welsh Ministers: Small Holdings and Allotments Act 1908 s 46(1). As to the valuer see PARA 540 note 6.

7 Small Holdings and Allotments Act 1908 s 46(1) (amended by the Land Settlement (Facilities) Act 1919 Sch 2). Any notice required by the Small Holdings and Allotments Act 1908 to be given may be sent by registered post: s 61(5).

8 Small Holdings and Allotments Act 1926 s 18(2). For the council's right to compensation see PARA 581.

9 Small Holdings and Allotments Act 1908 Sch 1 Pt II(7).

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#### **545. Entry on land compulsorily hired for allotments purposes.**

Where an order for the compulsory hiring of land<sup>1</sup> has been made<sup>2</sup>, and where necessary confirmed<sup>3</sup>, the council<sup>4</sup> entitled to hire the land under the order may, at any time after a notice to treat has been served<sup>5</sup>, and on giving not less than 14 days' notice to each owner<sup>6</sup>, lessee and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with the statutory provisions relating to entry on land compulsorily acquired<sup>7</sup>. The exercise of this power is subject to the payment of compensation<sup>8</sup>. Where the land to be compulsorily hired is subject to the interest of a yearly tenant<sup>9</sup>, the council is entitled, subject to the payment of compensation to the person in possession, to enter on and take possession of the land or such part thereof as is specified in the agreement, without previous consent<sup>10</sup>.

If a notice of entry relates to land on which there is a dwelling house, and the length of notice is less than three calendar months, the occupier of the dwelling house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal to an arbitrator against the notice, and the council will not be entitled to enter on the land except on such date and on such conditions as the arbitrator may award<sup>11</sup>.

Where a council has entered on land in accordance with the foregoing provisions it is not entitled to withdraw the notice to treat<sup>12</sup>.

1 See PARA 535 et seq. As to the meaning of 'land' see PARA 324 note 5.

2 Ie under the Small Holdings and Allotments Act 1908.

3 As to confirmation of compulsory hiring orders see PARA 538.

4 This is a reference to a district council or, in Wales, a county or county borough council: see PARA 534. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

5 As to notices to treat see PARA 549. A notice under the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 6 (see PARA 539) is deemed for these purposes to be a notice to treat: reg 25(1)(b).

6 As to the meaning of 'owner' see PARA 536 note 8.

7 Land Settlement (Facilities) Act 1919 s 2(1) (as originally enacted), (4) (s 2(1) amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4); Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(1)(a). The statutory provisions relating to entry on land compulsorily acquired are the Lands Clauses (Consolidation) Act 1845 ss 84-90 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq). Where a lease to an acquiring council has been executed in accordance with the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196 (see regs 15, 16; and PARA 541), the council may, subject to the interest of any existing tenant which is not to be extinguished by the hiring, enter on the land as from the date specified by the council in the notice to treat (see PARA 549): reg 16. As to the meaning of 'existing tenant' see PARA 529 note 5.

If in any case a council is authorised by a compulsory hiring order and the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, to enter upon and hold any land authorised to be compulsorily hired, and the owner or occupier of any such lands or any other person refuses to give up the possession thereof, or hinders the council from entering upon the land, a court of summary jurisdiction, on complaint made by the council, may require the owner or occupier of such land or other person to deliver

possession to the council or permit it to enter thereon, and any such order may be enforced as provided by the Magistrates' Courts Act 1980 s 63 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 827; **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 6): Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 18.

8 Land Settlement (Facilities) Act 1919 s 2(1) (as originally enacted), (4) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4). The compensation payable is such amount, with interest, as would have been payable if the Lands Clauses (Consolidation) Act 1845 ss 84-90 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 638 et seq) had been complied with, and must include such compensation by way of rent or otherwise, together with interest on such part of the compensation as is not paid by way of rent at the rate of 5% per annum from the time of entry on the land until such compensation is paid, as would have been payable if the council had at the date of entry hired the land of which possession is taken and extinguished the interest therein of any existing tenant: Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(2).

9 le a person in possession of the land whose interest is not greater than that of a tenant for a year, or from year to year.

10 See the Land Settlement (Facilities) Act 1919 s 2(2), (4); and the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 25(1)(a).

11 Land Settlement (Facilities) Act 1919 s 2(3) (as originally enacted), (4) (s 2(3) amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4). Any such appeal is determinable by an arbitrator under and in accordance with the Agricultural Holdings Act 1986, except that, in default of agreement, the arbitrator must be appointed by the President of the Royal Institution of Chartered Surveyors: Land Settlement (Facilities) Act 1919 s 2(3) (amended by the Agricultural Holdings Act 1986 Sch 14). As to arbitration under the Agricultural Holdings Act 1986 see PARA 469 et seq. As to the Royal Institution of Chartered Surveyors generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

12 Land Settlement (Facilities) Act 1919 s 2(1) (as originally enacted), (4); Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4. The reference in the text to a council not being entitled to withdraw the notice to treat is a reference to its not being entitled to exercise the powers conferred by the Small Holdings and Allotments Act 1908 s 39(8) (as to which see PARA 549).

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### *(c) Compulsory Acquisition Generally*

#### **546. General restrictions on compulsory acquisition for allotments purposes.**

No land<sup>1</sup> may be authorised by order<sup>2</sup> to be compulsorily acquired for allotments<sup>3</sup>, either by purchase<sup>4</sup> or hiring<sup>5</sup>, which at the date of the order:

- 254 (1) forms part of any park<sup>6</sup>, garden, or pleasure ground<sup>7</sup>;
- 255 (2) forms part of the home farm attached to or usually occupied with a mansion house<sup>8</sup>;
- 256 (3) is otherwise required for the amenity or convenience of any dwelling house<sup>9</sup>;
- or
- 257 (4) is woodland not wholly surrounded by or adjacent to land acquired<sup>10</sup> by a council<sup>11</sup>,

unless the order authorises the compulsory acquisition of a holding of 50 acres or less in extent or any part of such a holding<sup>12</sup>.

Land which is part of the property of the National Trust<sup>13</sup> may also not be compulsorily acquired<sup>14</sup> for the purposes of allotments<sup>15</sup>. Land which is or forms part of a metropolitan

common<sup>16</sup>, or which is subject to regulation under an order or scheme made in pursuance of the Inclosure Acts 1845 to 1899 or under any local Act or otherwise, or which is or forms part of any town or village green or of any area appointed as a public park, garden or pleasure ground or for use for the purposes of public recreation, may only be compulsorily acquired for allotments where the order for compulsory purchase is confirmed by Parliament or the National Assembly for Wales<sup>17</sup>. Certain Crown lands, including those belonging to the Duchies of Cornwall and Lancaster, and any land subject to rights of common, may not be compulsorily hired for allotments<sup>18</sup>.

Statutory considerations to which local authorities, the Secretary of State or the Welsh Ministers must have regard in making or confirming compulsory acquisition orders may further restrict the land available for compulsory acquisition<sup>19</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 Ie under the Small Holdings and Allotments Act 1908 (see PARAS 531, 535).

3 As to the meaning of 'allotment' see PARA 510.

4 See PARA 531 et seq.

5 See PARA 534 et seq.

6 'Park' means an ordinary, not an ancient legal park: *Pease v Courtney* [1904] 2 Ch 503. See note 8.

7 Small Holdings and Allotments Act 1908 s 41(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4).

8 Small Holdings and Allotments Act 1908 s 41(1) (as amended: see note 7). Land forming part of any park or of any home farm attached to and usually occupied with a mansion house may, however, be compulsorily acquired if not required for the amenity or convenience of the mansion house (Land Settlement (Facilities) Act 1919 s 16(1)(a)), except that such a holding may not in whole or part be compulsorily acquired by a council (see note 11) where it is shown to the satisfaction of the council that the holding is the principal means of livelihood of the occupier thereof, unless the occupier is a tenant and consents to the acquisition (s 16(3) (amended by the Small Holdings and Allotments Act 1926 Schs 1, 2)). Where it is proposed to acquire any such land, the order authorising the acquisition of the land will not be valid unless confirmed or made by the Secretary of State or the Welsh Ministers: Land Settlement (Facilities) Act 1919 s 16(2). As to the Secretary of State and the Welsh Ministers see PARA 643. As to what is a 'mansion house' cf the Settled Land Act 1925 s 65(2); and **SETTLEMENTS** vol 42 (Reissue) PARA 789.

9 Small Holdings and Allotments Act 1908 s 41(1) (as amended: see note 7).

10 Ie under the Small Holdings and Allotments Act 1908 (see PARAS 531, 535).

11 Small Holdings and Allotments Act 1908 s 41(1) (as amended: see note 7). The reference in the text to a council is, in connection with land compulsorily purchased, a reference to a district, parish, or London borough council, or, in Wales, a community, county or county borough council (see PARA 531), or, in connection with land compulsorily hired, a reference to a district council or, in Wales, a county or county borough council (see PARA 534). As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

12 Land Settlement (Facilities) Act 1919 s 16(1)(b).

13 Ie land which forms part of the trust property to which the National Trust Act 1907 applies, as to which see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq.

14 Ie under the Small Holdings and Allotments Act 1908 (see PARAS 531, 535).

15 Land Settlement (Facilities) Act 1919 s 28(4).

16 Ie within the meaning of the Metropolitan Commons Act 1866 ss 3, 4 (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 73A). Note, however, that land which is or which forms part of non-metropolitan commons may be appropriated under the Land Settlement (Facilities) Act 1919: see PARA 552 notes 7, 8.

17 Land Settlement (Facilities) Act 1919 s 28(1). In confirming such an order, regard must be had to the same considerations, and the same inquiries held, as are directed by the Commons Act 1876 to be taken into consideration and held in the forming of an opinion as to whether an application under the Inclosure Acts should be acceded to or not (see ss 7, 10, 11; and **COMMONS** vol 13 (2009) PARA 419): Land Settlement (Facilities) Act 1919 s 28(2). As to the Inclosure Acts see **COMMONS** vol 13 (2009) PARA 419 et seq. Procedural provision is also made: see the Land Settlement (Facilities) Act 1919 s 28(2). Where an order for compulsory purchase provides for giving other land in exchange for the common or open space to be purchased, the order may vest the land given in exchange in the persons in whom the common or open space purchased was vested subject to the same rights, trusts and incidents as attached to the common or open space and discharge the purchased land from all rights, trusts and incidents to which it was previously subject: s 28(3). Exchanges of land generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1).

18 See the Small Holdings and Allotments (Compulsorily Hiring) Regulations 1936, SR & O 1936/196, reg 30. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353. As to restriction on the compulsory acquisition of common land see **COMMONS** vol 13 (2009) PARA 479 et seq.

19 See the Small Holdings and Allotments Act 1908 s 41(2); and PARA 547.

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#### **547. Matters influencing decisions on compulsory acquisition for allotments purposes.**

In making an order<sup>1</sup> for the compulsory acquisition of land<sup>2</sup> for allotments<sup>3</sup>, either by purchase<sup>4</sup> or hiring<sup>5</sup>, a council<sup>6</sup> must:

- 258 (1) have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant<sup>7</sup>;
- 259 (2) so far as is practicable avoid taking an undue or inconvenient quantity of land from any one owner or tenant<sup>8</sup>; and
- 260 (3) so far as practicable avoid displacing any considerable number of agricultural labourers or others employed on or about the land<sup>9</sup>.

1 ie under the Small Holdings and Allotments Act 1908 (see PARAS 531, 535).

2 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired see PARA 546.

3 As to the meaning of 'allotment' see PARA 510. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

4 See PARA 531 et seq.

5 See PARA 534 et seq.

6 See PARA 546 note 11.

7 Small Holdings and Allotments Act 1908 s 41(2). As to the time limits within which notices to treat for the purposes of compulsory purchase must be served, and the circumstances in which notices may be withdrawn, see PARA 549.

8 Small Holdings and Allotments Act 1908 s 41(2).

9 Small Holdings and Allotments Act 1908 s 41(2). For this purpose, where part only of a holding is taken, the Secretary of State or the Welsh Ministers must take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith: s 41(2). As to the Secretary of State and the Welsh Ministers see PARA 643.

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#### **548. Creation of easements for allotments purposes.**

An order<sup>1</sup> for the compulsory purchase<sup>2</sup> or hiring<sup>3</sup> of land<sup>4</sup> for allotments<sup>5</sup> may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired<sup>6</sup>. If the owner of the land to be acquired so requires, every such order must provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by the owner and his tenants of all means of access, drainage, water supply, and other similar conveniences used or enjoyed by them over the land to be acquired<sup>7</sup>. However, no new easement created by or in pursuance of the order over land hired by a district council (in England) or a county or county borough council (in Wales)<sup>8</sup> continues beyond the determination of the hiring<sup>9</sup>.

1 le under the Small Holdings and Allotments Act 1908 (see PARAS 531, 535).

2 See PARA 531 et seq.

3 See PARA 534 et seq.

4 As to the meaning of 'land' see PARA 324 note 5.

5 As to the meaning of 'allotment' see PARA 510.

6 Small Holdings and Allotments Act 1908 s 39(4) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4).

7 Small Holdings and Allotments Act 1908 s 39(4) proviso.

8 le the councils empowered to hire land compulsorily for allotments: see PARA 534. As to these councils generally see PARA 520.

9 Small Holdings and Allotments Act 1908 s 39(4).

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#### **549. Notice to treat following compulsory acquisition for allotments purposes.**

Where an order has been made for the compulsory acquisition<sup>1</sup> of any land<sup>2</sup> for allotments<sup>3</sup>, notice to treat must be served within three calendar months after the date of the order, or the date of the confirmation of the order, failing which the order, so far as relating to the land in respect of which notice to treat has not been served, will become null and void<sup>4</sup>; and no further

order authorising the compulsory acquisition of that land or any part of it, if made within three years after the expiration of those three calendar months, will be valid unless confirmed by the Secretary of State or the Welsh Ministers<sup>5</sup>, nor may such further order be confirmed unless it is proved to the satisfaction of the Secretary of State or the Welsh Ministers that there are special reasons justifying the failure to exercise the powers under the original order and the making of the order submitted for confirmation<sup>6</sup>.

If, after the amount of the compensation (including, in the case of land compulsorily hired, the rent) to be paid has been determined<sup>7</sup>, it appears to the council<sup>8</sup> that the land cannot be let for allotments at such rent as will secure the council from loss, the council may, at any time within six weeks after the determination of the amount, by written notice withdraw the relevant notice to treat<sup>9</sup>. This power may not, however, be exercised where the council has entered on the land<sup>10</sup>.

1 le by purchase (see PARA 531 et seq) or hiring (see PARA 534 et seq).

2 As to the meaning of 'land' see PARA 324 note 5.

3 As to the meaning of 'allotment' see PARA 510.

4 Allotments Act 1922 s 12(1).

5 As to the Secretary of State and the Welsh Ministers see PARA 643.

6 Allotments Act 1922 s 12(2).

7 As to the determination of compensation and rent in relation to land compulsorily hired see PARA 540. As to the determination of compensation in relation to land compulsorily purchased see PARAS 531, 532.

8 See PARA 546 note 11.

9 Small Holdings and Allotments Act 1908 s 39(8). Any person on whom notice of withdrawal has been served is entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal: s 39(8). The amount of compensation is, in default of agreement, determinable by a single arbitrator in accordance with the Agricultural Holdings Act 1986 and not under the Land Compensation Act 1961: Small Holdings and Allotments Act 1908 s 58(1) (amended by the Agricultural Holdings Act 1986 Sch 14 para 2); Small Holdings and Allotments Act 1926 s 17(3)(a); Land Compensation Act 1961 s 40(2)(a). The remuneration of an arbitrator so appointed is fixed by the Secretary of State or the Welsh Ministers: Small Holdings and Allotments Act 1908 s 58(3). As to arbitration under the Agricultural Holdings Act 1986 see PARA 469 et seq.

10 Land Settlement (Facilities) Act 1919 s 2(1) (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 s 6, Sch 4; and the Acquisition of Land Act 1981 Sch 4 para 2). The reference in the text to entry on the land is a reference to entry by virtue of the Compulsory Purchase Act 1965 s 11(1) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 645). As to entry on land compulsorily purchased see PARA 533. As to entry on land compulsorily hired see PARA 545.

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## 550. Acquisition of land for allotments on behalf of parishes and communities.

A parish or (in Wales) community council<sup>1</sup> which proposes to acquire land<sup>2</sup> compulsorily, whether by purchase<sup>3</sup> or hiring<sup>4</sup>, must, instead of itself making or submitting a compulsory hiring order<sup>5</sup> to the Secretary of State or the Welsh Ministers<sup>6</sup>, make a representation to the district or (in Wales) county or county borough council<sup>7</sup>, which may, on behalf of the parish or

community council, exercise the statutory powers of compulsory acquisition<sup>8</sup>. The order will be carried into effect by the district, county or county borough council but the land acquired will be assured or demised to the parish or community council, which will pay all expenses<sup>9</sup>. If the district, county or county borough council refuses to proceed on the representation the parish or community council may petition the Secretary of State or the Welsh Ministers, who may, after appropriate inquiry, make such an order as the district, county or county borough council might have made<sup>10</sup>. A district, county or county borough council may also acquire land for leasing to a parish or community council within the district, county or county borough for the provision of allotments<sup>11</sup>.

1 The Small Holdings and Allotments Act 1908 s 39(7) and the Land Settlement (Facilities) Act 1919 s 17 refer to a parish council only but this should be read in relation to Wales as a reference to a community council: see PARA 520 note 2.

2 As to the meaning of 'land' see PARA 324 note 5. As to the land which may and may not be compulsorily acquired for allotments see PARA 546. As to the matters influencing decisions on the making of compulsory acquisition orders see PARA 547. As to the continuation or creation of easements over land compulsorily acquired see PARA 548. As to the meaning of 'allotment' see PARA 510.

3 See PARA 531.

4 See PARA 534.

5 As to compulsory hiring orders see PARA 535.

6 As to the Secretary of State and the Welsh Ministers see PARA 643.

7 The Small Holdings and Allotments Act 1908 s 39(7) and the Land Settlement (Facilities) Act 1919 s 17 refer to a district council only but this should be read in relation to Wales as a reference to a county or county borough council: see PARA 520 note 1.

8 Small Holdings and Allotments Act 1908 s 39(7) (amended by the Local Government Act 1972 Sch 29 Pt II para 9(4)). The reference in the text to the statutory powers of compulsory acquisition is a reference to the powers of compulsory acquisition under the Small Holdings and Allotments Act 1908.

9 Small Holdings and Allotments Act 1908 s 39(7) (as amended: see note 7).

10 Small Holdings and Allotments Act 1908 s 39(7) proviso (as amended: see note 7).

11 Land Settlement (Facilities) Act 1919 s 17 (amended by the Local Government Act 1972 Sch 29 Pt II para 10).

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## **551. Expenses on compulsory acquisition for allotments purposes.**

The expenses of a district, county or county borough council<sup>1</sup> incurred in respect of the compulsory acquisition of lands for allotments<sup>2</sup> on behalf of a parish or community council<sup>3</sup> must be paid by the parish or community council<sup>4</sup>.

1 The Small Holdings and Allotments Act 1908 s 39(7) refers to a district council but this should be construed as a reference to the authorities mentioned in the text: see PARA 520 note 1. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.



2 As to the meaning of 'allotment' see PARA 510. As to the meaning of 'land' see PARA 324 note 5. As to the compulsory acquisition of land for allotments see PARA 531 et seq.

3 The Small Holdings and Allotments Act 1908 s 39(7) refers to a parish council but this should be construed as a reference to the authorities mentioned in the text: see PARA 520 note 2.

4 Small Holdings and Allotments Act 1908 s 39(7) (amended by the Local Government Act 1972 Sch 29 Pt II para 9(4)).

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## (C) OTHER ACQUISITIONS

### **552. Powers of local authorities to appropriate land for allotments.**

The council of any district, parish, London borough or, in Wales, county, county borough or community<sup>1</sup> may, where no power of appropriation is otherwise provided, appropriate for the purpose of allotments<sup>2</sup> any land<sup>3</sup> held by it for its other purposes<sup>4</sup>. A district council or, in Wales, a county or county borough council<sup>5</sup> may, where it considers it is necessary or expedient to do so for the better carrying into effect of the applicable legislation<sup>6</sup> and where no power of appropriation is otherwise provided, appropriate for any purpose for which it is authorised to acquire land under that legislation any land held by it for any of its other purposes<sup>7</sup>. However, land which is or forms part of a metropolitan common<sup>8</sup>, or which is subject to regulation under an order or scheme made in pursuance of the Inclosure Acts 1845 to 1899 or under any local Act or otherwise, or which is or forms part of any town or village green or of any area appointed as a public park, garden or pleasure ground or for use for the purposes of public recreation, may not be so appropriated<sup>9</sup>.

1 The Land Settlement (Facilities) Act 1919 s 22(1) refers to 'the council of a borough, urban district or parish' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the meaning of 'land' see PARA 324 note 5.

4 Land Settlement (Facilities) Act 1919 s 22(1)(a) (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 3, Sch 34 Pt V).

5 The Land Settlement (Facilities) Act 1919 s 12(1) refers to a 'district council' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5.

6 I.e. the Allotments Acts 1908 to 1950, as to which see PARA 510 note 2.

7 Land Settlement (Facilities) Act 1919 s 12(1)(c)(i) (amended by the Local Government Act 1972 Sch 29 Pt II para 10). The exercise of this power is subject to the consent of the Secretary of State or the Welsh Ministers (Land Settlement (Facilities) Act 1919 s 12(1)(c)(i) (as so amended); Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(2), (8)), unless the power is being exercised by a county council in respect of land acquired under the Small Holdings and Allotments Act 1926 Pt I (ss 1-15) (acquisition of land for smallholdings; as to which see PARA 490 et seq) (s 20(1)). As to the Secretary of State and the Welsh Ministers see PARA 643.

Where the land to be appropriated forms part of any common, then in giving or withholding consent to the appropriation the Secretary of State or the Welsh Ministers must have regard to the same considerations, and hold the same inquiries, as are directed by the Commons Act 1876 to be taken into consideration and held in the forming of an opinion as to whether an application under the Inclosure Acts should be acceded to or not

(see ss 7, 10, 11; and **COMMONS** vol 13 (2009) PARA 419): Land Settlement (Facilities) Act 1919 s 28(2). As to the Inclosure Acts see **COMMONS** vol 13 (2009) PARA 419 et seq. Procedural provision is also made: see the Land Settlement (Facilities) Act 1919 s 28(2). Where a consent by the Secretary of State or the Welsh Ministers to the appropriation of land provides for giving other land in exchange for the common or open space to be appropriated, any order made by the Secretary of State or the Welsh Ministers in relation to the consent may vest the land given in exchange in the persons in whom the common or open space appropriated was vested subject to the same rights, trusts and incidents as attached to the common or open space and discharge the appropriated land from all rights, trusts and incidents to which it was previously subject: Land Settlement Facilities Act 1919 s 28(3). Exchanges of land generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1).

The exercise of the power under the Land Settlement (Facilities) Act 1919 s 12(1)(c)(i) is also subject to such conditions as to the repayment of any loan made for the purpose of the acquisition of the land or otherwise as the Secretary of State or the Welsh Ministers may impose: s 12(1)(c)(i) (as so amended).

8 le within the meaning of the Metropolitan Commons Act 1866 ss 3, 4 (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 73A). Note, however, that land which is or which forms part of non-metropolitan commons may be appropriated under the Land Settlement (Facilities) Act 1919 (see note 7).

9 Land Settlement (Facilities) Act 1919 s 28(1). Note, however, the effect of s 28(2) (see note 7); and the Town and Country Planning Act 1990 s 229(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947).

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### **553. Power of local authority to enter on unoccupied land for purpose of providing allotment gardens.**

The council of a London borough or district or, in Wales, a county or county borough<sup>1</sup> may, for the purpose of providing allotment gardens<sup>2</sup>, enter on any land<sup>3</sup>, other than agricultural land<sup>4</sup> and certain public land or land held for the purposes of public undertakings<sup>5</sup>, which is not the subject of a rateable occupation<sup>6</sup>. The council may adapt the land for use for that purpose<sup>7</sup> and let it either to tenants or to any association<sup>8</sup> for the purpose of sub-letting for such use<sup>9</sup>.

The council's right of occupation may be terminated by the council on six months' written notice<sup>10</sup>, or by the owner on three months' (where the land is required for any purpose other than agriculture, sport or recreation), or six months'<sup>11</sup> (where the land is required for use for sport or recreation) written notice<sup>12</sup>. The owner's notice must tell the council the purpose for which the resumption is required<sup>13</sup>, and the council may, by counter-notice served within 21 days of the receipt of that notice, demand that the question whether the resumption is required in good faith for the purpose specified be determined by arbitration<sup>14</sup>. Possession of the land may not be resumed until after the period for demanding arbitration has elapsed or, where arbitration is demanded, until after the arbitration<sup>15</sup>. On the termination of the occupation the council may remove any erection or work of adaptation, making good any injury to the land caused by the removal<sup>16</sup>.

Any person interested in any land entered upon in pursuance of these powers who suffers any loss thereby is entitled, on making a claim not later than one year after the termination of the right of occupation, to be paid by the council by way of compensation such periodical or other payments as may represent the loss<sup>17</sup>. Any tenant<sup>18</sup> to whom land is let by a council in pursuance of these powers and whose tenancy is terminated by the termination of the right of occupation of the council is, unless otherwise agreed in the contract of tenancy, entitled to recover from the council such compensation (if any) as would have been recoverable if his tenancy had been terminated by notice to quit given by the council, and has the same right to remove his crops as if the tenancy had been so terminated<sup>19</sup>.

1 The Allotments Act 1922 s 10(1) refers to 'the council of a borough or urban district' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-4. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment garden' see PARA 324 note 11.

3 As to the meaning of 'land' see PARA 324 note 5. Before entry the council must give not less than 14 days' notice in writing to the owner of the land in the manner set out in the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, reg 24 (as to which see PARA 538): Allotments Act 1922 s 10(2). 'Owner' includes the person who, but for the council's occupation, would be entitled to possession of the land: s 10(7).

4 The land which is 'agricultural land' for the purposes of the Local Government Act 1929 Pt V (largely repealed): such land is excluded from the purview of the Allotments Act 1922 s 10 by the Local Government Act 1929 Sch 10 para 16. The reference is to agricultural land within the meaning of Pt V (ss 67-84), which provided for the exclusion of such land for rating purposes, and should now be read as a reference to agricultural land as defined by the Local Government Finance Act 1988 Sch 5 para 2 (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 44).

5 Land being the property of a local authority, land which has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, land forming part of any metropolitan common within the meaning of the Metropolitan Commons Act 1866 (see ss 3, 4; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 73A), land which is subject, or might be made subject, to regulation under an order or scheme made in pursuance of the Inclosure Acts 1845 to 1899 (see **COMMONS** vol 13 (2009) PARA 419 et seq) or under any local Act or otherwise, land which is or forms part of any town or village green, or any area dedicated or appropriated as a public park, garden, or pleasure ground or for use for the purposes of public recreation, and land forming part of the New Forest (as defined in the New Forest Act 1877) or of the trust property to which the National Trust Act 1907 applies (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq), is excepted from the powers of entry conferred by the Allotments Act 1922 s 10: s 10(6).

6 Allotments Act 1922 s 10(1)(a), (6)(a). 'Rateable occupation' is defined as such occupation as would involve liability to payment of the poor rate or any rate leviable in the like manner as the poor rate: s 10(7). All rates (including the poor rate) were consolidated to form the 'general rate' by the General Rate Act 1967 s 2 (repealed). The non-domestic element of the general rate was replaced by a new form of non-domestic rating by the Local Government Finance Act 1988 Pt III (ss 41-67) (as to which see **RATING AND COUNCIL TAX**), and it is conceived that it is to this form of non-domestic rating that this definition of 'rateable occupation' should be taken to refer.

7 Allotments Act 1922 s 10(1)(b).

8 The association to which land may be let by the council under the Small Holdings and Allotments Acts 1908 to 1931. As to the Small Holdings and Allotments Acts 1908 to 1931 see PARA 488 note 3. As to consent to lettings see the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1), (3).

9 Allotments Act 1922 s 10(1)(c). Any tenancy created must terminate when the council's right of occupation terminates: s 10(1)(c).

10 Allotments Act 1922 s 10(1)(c), (3)(a). The notice must expire on or before 6 April or on or after 29 September in any year: s 10(3)(a).

11 The notice must expire on or before 6 April or on or after 29 September in any year: Allotments Act 1922 s 10(3)(b).

12 Allotments Act 1922 s 10(1)(c), (3)(b) (substituted by the Allotments Act 1925 s 6).

13 Allotments Act 1922 s 11(1).

14 Allotments Act 1922 s 11(2) (amended by the Allotments Act 1925 s 9; and the Agricultural Holdings Act 1986 Sch 14 para 10). Arbitration is under the Agricultural Holdings Act 1986, as to which see PARA 469 et seq.

15 Allotments Act 1922 s 11(3) (amended by the Allotments Act 1925 s 9).

16 Allotments Act 1922 s 10(1)(d).

17 Allotments Act 1922 s 10(5). In default of agreement such payments will be determined by valuation made by a person appointed, in default of agreement, by the Secretary of State or the Welsh Ministers: s 10(5). As to the Secretary of State and the Welsh Ministers see PARA 643. Any periodical payment of compensation in

the nature of rent must not exceed the rental value of the land (ie the annual rent which a tenant might reasonably be expected to pay for the land if the land had continued in the same condition as at the date of entry or, as the case may be, as at the date when possession was first taken): s 10(5), (7). As to the designation 'tenant' see PARA 510 note 10.

18 See note 17.

19 Allotments Act 1922 s 10(4).

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#### **554. Sale or lease of allotment land.**

A county council in England<sup>1</sup>, or a county or county borough council in Wales<sup>2</sup>, may sell or let to any district, parish, or London borough council, or, in Wales, any community council<sup>3</sup>, for the purpose of allotments<sup>4</sup>, any land<sup>5</sup> acquired by it for smallholdings<sup>6</sup> or cottage holdings<sup>7</sup>. The exercise of this power is subject to the consent of the Secretary of State or the Welsh Ministers<sup>8</sup>. A district, parish or London borough council<sup>9</sup> could formerly<sup>10</sup> sell or let to the county or county borough council, for the purpose of cottage holdings, any land acquired by it for allotments<sup>11</sup>.

A district council or, in Wales, a county or county borough council<sup>12</sup> may, where it considers it is necessary or expedient to do so for the better carrying into effect of the Small Holdings and Allotments Acts 1908 to 1931<sup>13</sup>, sell, mortgage, exchange or let any land acquired by it under that Act, or any interest in any such land<sup>14</sup>.

1 As to the English counties and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq.

2 As to county and county borough councils in Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq.

3 The Small Holdings and Allotments Act 1908 s 45 confers power on a county council to sell or let to a borough, urban district or parish council but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

4 As to the meaning of 'allotment' see PARA 510.

5 As to the meaning of 'land' see PARA 324 note 5.

6 As to the meaning of 'smallholding' see PARA 488. As to the acquisition of land for smallholdings see PARA 490.

7 Small Holdings and Allotments Act 1908 s 45 (amended by the Acquisition of Land (Authorisation Procedure) Act 1946 Schs 4, 6); Agricultural Land (Utilisation) Act 1931 s 12(1). Land can no longer be acquired for, or provided as, cottage holdings: see PARA 591 et seq.

8 Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1), (3). As to the Secretary of State and the Welsh Ministers see PARA 643.

9 Owing to the cessation of the powers to sell cottage holdings in 1970 (see PARA 592), this is in effect a reference to the district and parish councils in England and Wales as they were constituted prior to the reorganisation of local authorities effected by the Local Government Act 1972 (see PARA 520 notes 1, 2), or the London borough councils.

10 ie until 1970: see PARA 592.

11 Small Holdings and Allotments Act 1908 s 45 (as amended: see note 7); Agricultural Land (Utilisation) Act 1931 s 12(1). Note that land may no longer be sold or let for cottage holdings: see PARA 592.

12 The Land Settlement (Facilities) Act 1919 s 12(1) refers to a 'district council' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1, 5.

13 As to the Small Holdings and Allotments Act 1908 to 1931 see PARA 488 note 3.

14 Land Settlement (Facilities) Act 1919 s 12(1)(b) (amended by the Local Government Act 1972 Sch 29 Pt II para 10). The exercise of the power of sale, mortgage or exchange is subject to the consent of the Secretary of State or the Welsh Ministers (Land Settlement (Facilities) Act 1919 s 12(1)(b) (as so amended); Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1), (3), (8)), unless the power is being exercised by a county council in respect of land acquired under the Small Holdings and Allotments Act 1926 Pt I (ss 1-15) (acquisition of land for smallholdings; as to which see PARA 490 et seq) (s 20(1)).

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### **555. Letting of New Forest land for allotment gardens.**

The Secretary of State<sup>1</sup> has a continuing power to let<sup>2</sup> to a local authority<sup>3</sup>, for any term, land in the New Forest<sup>4</sup> for use as allotment gardens<sup>5</sup>, and may let such further land in the Forest, not exceeding 60 acres, as he may agree with the verderers of the Forest<sup>6</sup>. While so let, the land is free from rights of common and similar rights except the right of the public to use any highway on the land<sup>7</sup>.

1 Powers in relation to land in the New Forest were originally vested in the Commissioners of Woods, who were retitled the Commissioners of Crown Lands (ultimately the Crown Estate Commissioners) by the Forestry (Title of Commissioner of Woods) Order 1924, SR & O 1924/1370. The estate and powers of the Crown and the Commissioners of Crown Lands in or in connection with lands situated in the New Forest were transferred to the Forestry Commissioners by the combined effect of the Forestry (Transfer of Woods) Act 1923 s 1 (repealed) and the Forestry (Transfer of Woods) Order 1924, SR & O 1924/386 (amended by SR & O 1926/677). All land vested in the Forestry Commissioners was subsequently transferred to the Minister of Agriculture and Fisheries (now the Secretary of State: see PARA 643) by the Forestry Act 1945 s 4(5) (repealed). A reservation was made in s 4(5), (6) (repealed; but continued by the Forestry Act 1967 Sch 6 para 4(2)) under which former Commission land was deemed to have been placed at the disposal of the Commissioners for the purposes of the exercise of their functions under the Forestry Acts 1919 to 1945, but this did not expressly extend to the Commissioners' functions under the Allotments Act 1922, and it is accordingly submitted that the powers under s 21 are exercisable by the Secretary of State. As to the Forestry Commission and the Commissioners generally see **FORESTRY** vol 52 (2009) PARA 34 et seq.

2 Ie under the provisions of the Small Holdings and Allotments Acts 1908 to 1919 which relate to allotments: Allotments Act 1922 ss 21(1), 22(1). As to the meaning of 'allotment' see PARA 510.

3 The Allotments Act 1922 s 21(1) refers to 'a local authority under the Allotments Acts'. As to the local authorities empowered to take land on lease for the purposes of allotments see PARA 526. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

4 Ie any land in the New Forest as defined in the New Forest Act 1877 which is vested in the Secretary of State (see note 1) and was on 5 April 1922 being used for the provision of allotment gardens. As to the meaning of 'land' see PARA 324 note 5.

5 See the Allotments Act 1922 s 21(1). If the land is used for any other purpose, the lease will become void: s 21(1) (proviso).

6 Allotments Act 1922 s 21(1). As to the verderers of the New Forest see **FORESTRY** vol 52 (2009) PARA 6.

7 Allotments Act 1922 s 21(2). Rent received by the Secretary of State is divisible between him and the verderers of the Forest in such proportions as may be agreed or, in default of agreement, determined by the arbitration of a single arbitrator: see s 21(3) (amended by the Arbitration Act 1996 Sch 4).

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### **556. Sale, exchange, transfer and use of field garden allotments.**

Allotment wardens (or their successors)<sup>1</sup> may, with the approval of the Secretary of State or the Welsh Ministers<sup>2</sup>, sell all or any part of a field garden<sup>3</sup> and purchase other suitable land for the same purpose<sup>4</sup>. The Secretary of State and the Welsh Ministers may also authorise the exchange of inconveniently placed or unsuitable field gardens for other land<sup>5</sup>.

Allotment wardens or their successors may, by agreement with the council of the London borough, district, parish, or, in Wales, county, county borough or community in which the field garden is wholly or partly situated, transfer the management of the land<sup>6</sup> to the council upon such terms as may be agreed subject to the sanction, as regards the wardens, of the Secretary of State or the Assembly, and thereupon the land vests in the council<sup>7</sup>.

Any land forming part of a field garden allotment which has been compulsorily acquired<sup>8</sup> by a minister, local authority or statutory undertakers, or appropriated by a local authority for planning purposes, may, notwithstanding anything in any enactment relating to such allotments or by which the land is specially regulated, be used either, if acquired by a minister, in any manner for any purpose for which he acquired it or, in any other case, by any person in any manner in accordance with planning permission<sup>9</sup>.

1 As to the allotment wardens and (where relevant) their successors see PARAS 511, 512.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 As to field garden allotments see PARA 512.

4 See the Commons Act 1876 s 27; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 551. Approval would not be given unless it was proved that more suitable land could and would be forthwith purchased: see s 27.

5 See the Inclosure Act 1845 s 149; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 551.

6 As to the meaning of 'land' see PARA 324 note 5.

7 Small Holdings and Allotments Act 1908 s 33(1). Section 33 refers to 'the council of the borough, urban district or parish' but this should be construed as a reference to the authorities mentioned in the text: see PARA 520 notes 1-5.

8 As to the acquisition of land for field garden allotments see PARA 530.

9 See the Town and Country Planning Act 1990 s 241(1); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 962. It was formerly unlawful to use any field garden for any purpose other than that declared by the Act and award under which it was set out, notwithstanding anything in any other Act: see the Commons Act 1876 s 19; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 552.

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### **(iii) Letting of Allotments**

## **A. TERMS AND CONDITIONS**

### **557. Regulation of lettings of allotments.**

A district, parish, London borough, or, in Wales, a community, county or county borough council<sup>1</sup> may make such rules<sup>2</sup> as appear to be necessary or proper for regulating the letting of allotments<sup>3</sup>, for preventing any undue preference in such letting, and generally for giving effect to the statutory requirements relating to the provision of allotments<sup>4</sup>. The rules may define the persons eligible to be tenants<sup>5</sup>, the notices to be given<sup>6</sup> for the letting of allotments, the size of the allotments, the conditions under which they are to be cultivated, and the rent to be paid for them<sup>7</sup>, and must provide for reasonable notice<sup>8</sup> to be given to determine the tenancy<sup>9</sup>. Sub-letting of an allotment is forbidden, except with the consent of the council<sup>10</sup>.

1 The Small Holdings and Allotments Act 1908 s 28 refers to 'a borough, urban district or parish council' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 Rules for the time being in force under the Small Holdings and Allotments Act 1908 s 28 are binding on all persons, and the council must cause them to be from time to time made known, in such manner as the council thinks fit, to all persons interested, and must cause a copy of them to be given gratis to any inhabitant of the council's area who demands it: s 28(4).

3 le under the Allotments Acts 1908 to 1950 (see PARA 510 note 2). As to the meaning of 'allotment' see PARA 510

4 Small Holdings and Allotments Act 1908 s 28(1). The reference in the text to the statutory requirements relating to the provision of allotments is a reference to Pt II (ss 23-35). Unless otherwise provided, the rules apply to an allotment held under a tenancy made before they come into operation: Land Settlement (Facilities) Act 1919 s 21(3).

5 Such persons must in any case be resident in the council's area: see the Small Holdings and Allotments Act 1908 s 23(1); and PARA 520.

6 Any notice required by the Small Holdings and Allotments Act 1908 to be given may be sent by registered post: s 61(5).

7 Small Holdings and Allotments Act 1908 s 28(2).

8 For the length of notice in the case of an allotment which is an agricultural holding see the Agricultural Holdings Act 1986 s 25; and PARA 373. In the case of an allotment garden see the Allotments Act 1922 s 1(1)(a); and PARA 564.

9 Small Holdings and Allotments Act 1908 s 28(3) (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 1(a), Sch 34 Pt V).

10 Small Holdings and Allotments Act 1908 s 27(4) (amended by the Land Settlement (Facilities) Act 1919 Sch 2).

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### **558. Rent of allotments.**

Land<sup>1</sup> let<sup>2</sup> by a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>3</sup> for use as an allotment must be let at such a rent as a tenant<sup>4</sup> may reasonably be expected to pay for the land if let for such use on the terms (other than terms as to rent) on which it is in fact let<sup>5</sup>, although the council may let such land at a lesser rent if it is satisfied

that there exist special circumstances affecting the person to whom it is to be let which render it proper for it to let the land to him at the lesser rent<sup>6</sup>. Unless the yearly rent for land let by a council for allotments is £1.25 or less, not more than one quarter's rent may be required to be paid in advance<sup>7</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 le under the Allotments Acts 1908 to 1950; as to which see PARA 510 note 2.

3 The Allotments Act 1950 s 10(6) refers only to 'a council' but should be construed as referring to the authorities empowered to let land for allotments: see PARA 520. As to the meaning of 'allotment' see PARA 510.

4 As to the designation 'tenant' see PARA 510 note 10.

5 Allotments Act 1950 s 10(1). As to the recovery of rent see PARA 559. 'Reasonable rent' was considered in *Harwood v Borough of Reigate and Banstead* (1981) 43 P & CR 336, 80 LGR 660. The deputy judge held that the council should not discriminate between charges made for allotments and those made for other recreational activities provided by the council. The report of the Departmental Committee of Inquiry into Allotments 1969 (Cmd 4166) had recommended that 'allotment gardening should in future be considered primarily as a recreation'.

6 Allotments Act 1950 s 10(1) proviso.

7 Allotments Act 1950 s 10(2) (amended by virtue of the Decimal Currency Act 1969 s 10(1)).

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### **559. Recovery of rent and possession in the case of allotments.**

Rent<sup>1</sup> for an allotment<sup>2</sup> let by a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>3</sup>, and the possession of any allotment after notice to quit or failure to deliver up possession as required by law, may be recovered by the council as landlord<sup>4</sup>. The court directing recovery of possession of an allotment from any tenant may stay delivery of possession until the payment of any compensation<sup>5</sup> due to the outgoing tenant has been made or secured to the court's satisfaction<sup>6</sup>.

1 As to the levying and payment of rent see PARA 558.

2 As to the meaning of 'allotment' see PARA 510.

3 The Small Holdings and Allotments Act 1908 s 30(1) refers only to 'a council' but should be construed as referring to the authorities empowered to let land for allotments: see PARA 520.

4 Small Holdings and Allotments Act 1908 s 30(1). As to the recovery of rent see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 282 et seq; as to distress for rent see **DISTRESS** vol 13 (2007 Reissue) PARA 905 et seq.

5 As to compensation see PARA 566 et seq.

6 Small Holdings and Allotments Act 1908 s 30(3). The tenant of an agricultural holding is entitled to a charge on the holding in respect of compensation due from the landlord: see the Agricultural Holdings Act 1986 s 85(2); and PARA 475.



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### **560. Keeping hens and rabbits in the case of allotments.**

An occupier of land<sup>1</sup> may keep hens or rabbits, otherwise than by way of trade or business, in any place on the land, and erect or place and maintain structures reasonably necessary for that purpose, notwithstanding any provision of a lease or tenancy to the contrary or any covenant, contract or undertaking relating to the use of the land<sup>2</sup>. This provision does not authorise the keeping of hens or rabbits in a place or manner so as to be prejudicial to health or a nuisance, nor does it affect the operation of any enactment<sup>3</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 Allotments Act 1950 s 12(1).

3 Allotments Act 1950 s 12(1) proviso.

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### **561. Unlet allotments.**

An allotment<sup>1</sup> which cannot be let for allotments<sup>2</sup> may be let to any person whatever at the best annual rent which can be obtained, without premium, and on such terms as may enable the council to resume possession within a period not exceeding 12 months if it should at any time be required for letting for allotments<sup>3</sup>.

1 As to the meaning of 'allotment' see PARA 510.

2 Ie let in accordance with the provisions of the Allotments Acts 1908 to 1950 and the rules made thereunder. As to the making of rules see PARA 557.

3 Small Holdings and Allotments Act 1908 s 27(5) (amended by the Statute Law (Repeals) Act 1993).

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### **562. Letting and management of field garden allotments.**

Allotment wardens (or their successors)<sup>1</sup> may let field garden allotments<sup>2</sup> not exceeding one quarter of an acre to poor inhabitants of the parish or community<sup>3</sup> for one year or on a tenancy from year to year at the full yearly agricultural value free of all rentcharge and other rates, but if any land cannot be let in quarter acre plots they can let field gardens not exceeding one acre in size at a fair agricultural rent<sup>4</sup>. Surplus rents are available for the maintenance and improvement of field gardens or of recreation grounds, and can also be used for drainage, fencing or the hiring or purchasing of additional land for field gardens or recreation grounds<sup>5</sup>.

No building may be erected for or used as a dwelling house on a field garden allotment<sup>6</sup>. The tenancy of a field garden allotment is determinable by one month's notice in the event of the occupier being 40 days in arrears with his rent, or failing to observe the terms and conditions of his tenancy, or going to reside more than one mile outside the parish or community<sup>7</sup>. Possession can be recovered by county court proceedings, and rent can be recovered by distress or otherwise by the wardens or their successors as if the legal estate were vested in them<sup>8</sup>.

1 As to the allotment wardens and (where relevant) their successors see PARAS 511, 512.

2 As to field garden allotments see PARA 512.

3 The Inclosure Act 1845 s 109 refers to a parish but this should be construed as a reference to the authorities mentioned in the text: see PARA 520 note 2.

4 See the Inclosure Act 1845 s 109 (amended by the Statute Law Revision Act 1891); and the Commons Act 1876 s 26 (amended by the Statute Law Revision Act 1894).

5 See the Commons Act 1876 s 27; the Commons Act 1879 s 2; the Commons Act 1899 s 16; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 550, 551.

6 Inclosure Act 1845 s 109 (as amended: see note 4).

7 Inclosure Act 1845 s 110 (amended by the Statute Law Revision Act 1891; and the Allotments Act 1922 s 23(2), Schedule). The provision there made for the determination of field garden tenancies is similar to that made by the Small Holdings and Allotments Act 1908 s 30(2) in respect of allotments let by councils, and the special statutory provisions applicable to the determination of tenancies of allotments which are allotment gardens or agricultural holdings (as to which see PARAS 563, 564) apply equally to field gardens in either of those categories.

8 Inclosure Act 1845 ss 111, 112 (s 111 amended by the Rent Act 1965 s 51, Sch 6 para 1).

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## ***B. DETERMINATION OF LETTINGS***

### **563. Provisions applicable to determination of allotment tenancies.**

The provisions applicable to the determination of the tenancy of an allotment<sup>1</sup> differ according to whether the allotment concerned is an allotment garden<sup>2</sup>, an agricultural holding<sup>3</sup>, or a farm business tenancy<sup>4</sup>, or is in none of those categories. If the allotment is an allotment garden it cannot also be an agricultural holding or a farm business tenancy<sup>5</sup>, and special provisions apply to the determination of its letting<sup>6</sup>. If the allotment is an agricultural holding the tenancy may be determined only in accordance with the provisions of the Agricultural Holdings Act 1986<sup>7</sup>. If the allotment is let on a farm business tenancy, the tenancy must be determined in accordance with the Agricultural Tenancies Act 1995<sup>8</sup>. If, however, the allotment falls within none of these categories there are no statutory provisions specially applicable to the determination of a tenancy of it, except where it is let by a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>9</sup>, in which case, if the rent is in arrear for 40 days, or if it appears to the council that a tenant, not less than three months after the commencement of the tenancy, has not observed the rules affecting the allotment<sup>10</sup>, or is resident more than a mile out of the district, parish, borough, community, county or county

borough for which the allotments are provided, the council may give him one month's notice determining the tenancy<sup>11</sup>.

Special provision is made for the determination of an allotment tenancy and compensation therefor where allotment land is comprised in a compulsory rights order under the Opencast Coal Act 1958<sup>12</sup>.

- 1 As to the meaning of 'allotment' see PARA 510.
- 2 As to the meaning of 'allotment garden' see PARA 324 note 11.
- 3 Ie within the meaning of the Agricultural Holdings Act 1986 s 1(1) (see PARA 323).
- 4 Ie within the meaning of the Agricultural Tenancies Act 1995 s 1 (see PARA 302).
- 5 See PARA 510.
- 6 See PARA 564.
- 7 See *Stevens v Sedgman* [1951] 2 KB 434, [1951] 2 All ER 33, CA. As to the termination of tenancies under the Agricultural Holdings Act 1986 see PARA 328.
- 8 As to the termination of tenancies under the Agricultural Tenancies Act 1995 see ss 5-7; and PARA 304.
- 9 The Small Holdings and Allotments Act 1908 s 30 refers only to 'a council' but should be construed as referring to the authorities empowered to let land for allotments: see PARA 520.
- 10 Ie rules made by or in pursuance of the Small Holdings and Allotments Act 1908 (see PARA 557).
- 11 Small Holdings and Allotments Act 1908 s 30(2) (amended by the Allotments Act 1922 Schedule). Notice is given by serving it on the tenant or, if he resides out of the council's area, by leaving it at his last known place of abode in the area, or by fixing it in some conspicuous manner on the allotment: Small Holdings and Allotments Act 1908 s 30(2).
- 12 See the Opencast Coal Act 1958 Sch 8; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 451, 491-492.

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#### **564. Determination of tenancies of allotment gardens.**

Where land<sup>1</sup> is let on a tenancy for use by the tenant as an allotment garden<sup>2</sup>, or is let to a council of any district, parish, or London borough, or, in Wales, community, county or county borough<sup>3</sup>, or an association<sup>4</sup>, for subletting for that use<sup>5</sup>, the tenancy or any part thereof cannot be terminated by the landlord<sup>6</sup> by notice to quit or re-entry, notwithstanding any agreement to the contrary<sup>7</sup>, except<sup>8</sup>:

- 261 (1) by 12 months<sup>9</sup> or longer notice to quit expiring on or before 6 April or on or after 29 September<sup>10</sup>;
- 262 (2) by re-entry after three months' previous written notice to the tenant under a power of re-entry contained in or affecting the contract of tenancy, on account of the land being required for building, mining or other industrial purpose<sup>11</sup>, or for roads or sewers necessary in connection with those purposes<sup>12</sup>;
- 263 (3) by re-entry under a power contained in or affecting the contract of tenancy in the case of land let by a corporation or company being the owners or lessees of a railway, dock, canal, water or other public undertaking on account of the land being

- required for any non-agricultural purpose for which the land was acquired or held by it or has been appropriated by it under statutory provision, but so that, except in a case of emergency, the tenant must be given three months' written notice of the intended re-entry<sup>13</sup>;
- 264 (4) by re-entry under a power contained in or affecting the contract of tenancy in the case of land let by a council, after three months' previous written notice to the tenant on account of the land being required by the council for a non-agricultural purpose for which it was acquired, or has been appropriated under any statutory provision<sup>14</sup>; or
- 265 (5) by re-entry for non-payment of rent, breach of any term or condition of the tenancy, bankruptcy of the tenant, the tenant compounding with creditors, or, in the case of an association, its liquidation<sup>15</sup>.

These provisions do not apply to land held by or on behalf of the Secretary of State<sup>16</sup> and let for use as an allotment garden when possession of the land is required for naval, military or air force purposes or the purposes of the Secretary of State<sup>17</sup>. These provisions also do not apply to land attached to a cottage<sup>18</sup> or to land forming part of a Royal Park<sup>19</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 As to the meaning of 'allotment garden' see PARA 324 note 11. As to the determination by notice of an allotment tenancy by a council see PARA 563.

3 The Allotments Act 1922 s 1(1) refers to 'a local authority' but this should be construed as a reference to the authorities mentioned in the text, ie those empowered to take land on lease for the purposes of allotments. As to those authorities see PARA 526. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

4 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

5 Where land is used by the tenant as an allotment garden, then, for these purposes, unless the contrary is proved, the land is deemed to have been let to him to be used as an allotment garden and, where the land has been sublet to him by a council which holds the land under a contract of tenancy, the land is deemed to have been let to that council for the purpose of being sublet for such use: Allotments Act 1922 s 22(4); Allotments Act 1950 s 7.

6 As to the meaning of 'landlord' see PARA 510 note 10. Note also, as to the meaning of 'landlord' in connection with land compulsorily hired, PARA 536 note 7.

7 See *Wombwell UDC v Burke* [1966] 2 QB 149, [1966] 1 All ER 911, CA, where a notice expiring in accordance with the Allotments Act 1922 but not with the agreement was upheld.

8 Allotments Act 1922 s 1(1).

9 The Allotments Act 1922 s 1(1)(a) (as originally enacted) prescribed a period of six months, which still applies in the case of land let under the Defence (General) Regulations 1939, SR & O 1939/927, reg 62A (revoked), or the Emergency Laws (Miscellaneous Provisions) Act 1953 s 5: s 5(3); Allotments Act 1950 s 6.

10 Allotments Act 1922 s 1(1)(a) (amended by the Allotments Act 1950 s 1).

11 'Industrial purpose' does not include use for agriculture or sport: Allotments Act 1922 s 22(1). As to the meaning of 'agriculture' see PARA 324 note 5.

12 Allotments Act 1922 s 1(1)(b).

13 Allotments Act 1922 s 1(1)(c).

14 Allotments Act 1922 s 1(1)(d) (amended by the Statute Law (Repeals) Act 1993).

15 Allotments Act 1922 s 1(1)(e).

16 As to the Secretary of State see PARA 643.

17 Allotments Act 1922 s 1(4) (amended by the Allotments Act 1950 s 8; and by SI 1964/488). The Allotments Act 1922 s 1(4) refers to the Minister of Supply, the land, functions etc formerly vested in whom became vested in the Secretary of State for Trade and Industry, by the following process: the functions of the Minister of Supply in connection with radioactive substances and atomic energy were transferred to the Lord President of the Council (see the Transfer of Functions (Atomic Energy and Radioactive Substances) Order 1953, SI 1953/1673), then to the Prime Minister (see the Transfer of Functions (Atomic Energy and Radioactive Substances) Order 1957, SI 1957/561), the Secretary of State for Education and Science (see the Secretary of State for Education and Science Order 1964, SI 1964/490), the Minister of Technology (see the Minister of Technology Order 1964, SI 1964/2048), and finally to the Secretary of State for Trade and Industry (see the Secretary of State for Trade and Industry Order 1970, SI 1970/1537; the Secretary of State (New Departments) Order 1974, SI 1974/692; and the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127). Other land and functions of the Minister of Supply continued to reside with him on his redesignation as the Minister of Aviation (see the Minister of Aviation Order 1959, SI 1959/1768), the relevant functions of whom were then transferred to the Board of Trade (see the Transfer of Functions (Civil Aviation) Order 1966, SI 1966/741), and then to the Secretary of State for Trade and Industry (see the Secretary of State for Trade and Industry Order 1970, SI 1970/1537; the Secretary of State (New Departments) Order 1974, SI 1974/692; and the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127). No order was made transferring to either the Secretary of State for Wales, the National Assembly for Wales or the Welsh Ministers any of the relevant functions so far as exercisable in relation to Wales. The Secretary of State for Trade and Industry has been redesignated the Secretary of State for Business, Enterprise and Regulatory Reform.

18 Allotments Act 1922 s 3(1); Allotments Act 1950 s 6.

19 Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993). Otherwise, however, these provisions do apply to land vested in Her Majesty in right of the Crown or the Duchy of Cornwall and, except as before provided (see text and notes 16, 17), to land vested in any government department for public purposes: Allotments Act 1922 s 7. As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

## UPDATE

### 564 Determination of tenancies of allotment gardens

NOTE 17--The Secretary of State for Business, Enterprise and Regulatory Reform has been redesignated as the Secretary of State for Business, Innovation and Skills: see the Secretary of State for Business, Innovation and Skills Order 2009, SI 2009/2748.

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### 565. Resumption of possession by superior owner where land held by authority for allotments purposes.

Where land<sup>1</sup> has been let to a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>2</sup>, or an association<sup>3</sup>, for the purpose of being sublet for use as allotment gardens<sup>4</sup>, or is occupied by a council under its power to enter unoccupied land<sup>5</sup>, and the landlord<sup>6</sup>, or the person who, but for such occupation, would be entitled to possession, proposes to resume possession for any particular purpose, written notice of that purpose must be given to the council or association<sup>7</sup>.

The council may by counter-notice served within 21 days after receipt of the notice on the person requiring possession demand that the question whether possession is required in good

faith for the specified purpose be determined by arbitration<sup>9</sup>. Possession must not be resumed until after the period of 21 days or the determination of the question<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 The Allotments Act 1922 s 11(1) refers to 'a local authority' but this should be construed as a reference to the authorities mentioned in the text, ie those empowered to take land on lease for the purposes of allotments. As to those authorities see PARA 526. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

3 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

4 As to the meaning of 'allotment garden' see PARA 324 note 11.

5 See the Allotments Act 1922 s 10; and PARA 553.

6 As to the meaning of 'landlord' see PARA 510 note 10.

7 Allotments Act 1922 s 11(1). Note that s 11 does not apply where possession is required by a corporation or company as owners or lessees of a railway, dock, canal, water or other public undertaking: s 11(4).

8 Allotments Act 1922 s 11(2) (amended by the Allotments Act 1925 s 9). Arbitration is under the Agricultural Holdings Act 1986 (as to which see PARA 469 et seq): Allotments Act 1922 s 11(2) (amended by the Agricultural Holdings Act 1986 Sch 14 para 10).

9 Allotments Act 1922 s 11(3) (amended by the Allotments Act 1925 s 9).

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### ***C. COMPENSATION AT END OF TENANCIES***

#### **(A) RIGHT TO COMPENSATION**

##### **566. Rights on expiration of tenancy of allotment.**

On the expiration of his tenancy of an allotment<sup>1</sup>, a tenant may be entitled to compensation for improvements, for disturbance and other matters, and a landlord may be entitled to compensation for deterioration to the allotment<sup>2</sup>. The tenant may alternatively have the right to remove fixtures, fruit trees and bushes and like matters. The rights of the landlord and tenant may arise under custom<sup>3</sup> or agreement, or under statute. The statutory provisions applicable differ, as in the case of determination of tenancies<sup>4</sup>, according to whether the allotment is an allotment garden<sup>5</sup>, an agricultural holding<sup>6</sup>, a farm business tenancy<sup>7</sup> or an allotment not in any of those groups<sup>8</sup>. Special provision for compensation is made where an allotment tenancy terminates in pursuance of a compulsory rights order under the Opencast Coal Act 1958<sup>9</sup>.

1 As to the meaning of 'allotment' see PARA 510.

2 As to the meaning of 'landlord', and the designations 'landlord' and 'tenant', see PARA 510 note 10.

3 Customary rights are considered in relation to agricultural tenancies under the Agricultural Holdings Act 1986: see PARA 352-356.

4 See PARAS 563-564.

5 As to the meaning of 'allotment garden' see PARA 324 note 11. For provisions as to compensation see PARAS 567-575.

6 See under the Agricultural Holdings Act 1986. As to compensation for allotments which are agricultural holdings see PARA 576.

7 As to compensation for allotments which are farm business tenancies see PARA 577.

8 For general provision as to compensation see PARAS 578-581.

9 See the Opencast Coal Act 1958 Sch 8; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 451, 491-492.

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## (B) ALLOTMENT GARDENS

### 567. Compensation for improvements on quitting allotment gardens.

The tenant<sup>1</sup> of an allotment garden<sup>2</sup> which is not a parcel of land<sup>3</sup> attached to a cottage<sup>4</sup>, is entitled, notwithstanding any agreement to the contrary, on quitting the land or part of the land on the termination of the tenancy of the whole or that part of it, to obtain from the landlord<sup>5</sup> compensation<sup>6</sup> for ordinary growing crops<sup>7</sup> and for manure applied to the land<sup>8</sup> based on their value to an incoming tenant<sup>9</sup>, but the compensation is recoverable only if the tenancy was terminated by the landlord by statutory re-entry<sup>10</sup> or by notice to quit<sup>11</sup>. A tenant whose tenancy is determined by the termination of his landlord's tenancy can recover compensation from his landlord as if notice to quit had been given by his landlord<sup>12</sup>. Compensation is similarly recoverable by a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>13</sup>, or an association<sup>14</sup>, where it has sublet land for allotment gardens<sup>15</sup>. Save as above or as provided by the contract of tenancy the tenant of an allotment garden is not entitled to compensation for improvements<sup>16</sup>, although compensation for disturbance<sup>17</sup> may be recoverable<sup>18</sup>.

1 As to the designation 'tenant' see PARA 510 note 10.

2 As to the meaning of 'allotment garden' see PARA 324 note 11. These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993); Allotments Act 1950 s 7. As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

3 As to the meaning of 'land' see PARA 324 note 5.

4 Allotments Act 1922 s 3(1); Allotments Act 1950 s 6.

5 As to the meaning of 'landlord' see PARA 510 note 10.

6 Allotments Act 1922 s 2(1), (7). As to compensation in respect of certain smaller allotments see PARA 578.

7 If the tenancy terminates between 29 September and 11 October, inclusive, by notice to quit or termination of the landlord's tenancy, the tenant is entitled to remove growing crops within 21 days after the tenancy terminates: Allotments Act 1922 s 2(9).

8 Allotments Act 1922 s 2(3).

9 Allotments Act 1922 s 22(3).

10 Let under the Allotments Act 1922 s 1(1)(b), (c) or (d) (see PARA 564).

11 Allotments Act 1922 s 2(2) (substituted by the Allotments Act 1950 s 2(1)). This provision applies also to land let under the Emergency Laws (Miscellaneous Provisions) Act 1953 s 5: s 5(3).

12 Allotments Act 1922 s 2(4).

13 The Allotments Act 1922 s 2(6) refers to 'a local authority' but this should be construed as referring to the authorities empowered to let land for allotments: see PARA 520.

14 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

15 See the Allotments Act 1922 s 2(6); and PARA 580.

16 Allotments Act 1922 s 2(8).

17 See PARA 568.

18 Allotments Act 1950 s 3(3).

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## **568. Compensation for disturbance of allotment garden.**

Where land<sup>1</sup> is let for use by a tenant<sup>2</sup> as an allotment garden<sup>3</sup>, or to a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>4</sup>, or an association<sup>5</sup>, for the purpose of being sublet for such use, and the tenancy is terminated, as to the whole or any part of the land comprised in it, by statutory re-entry<sup>6</sup>, by the termination of the landlord's<sup>7</sup> tenancy<sup>8</sup>, or, where the landlord is a local authority which has let land previously unoccupied<sup>9</sup>, by the termination of its right of occupation<sup>10</sup>, the tenant is entitled, notwithstanding any agreement to the contrary, on quitting the land or that part of it, to recover from the landlord compensation for disturbance<sup>11</sup>, in addition to any compensation to which a tenant may be entitled for growing crops and manure<sup>12</sup>. The amount of compensation for disturbance is one year's rent at the rate payable immediately before the termination of the tenancy where the whole tenancy is terminated<sup>13</sup> or, where the tenancy of only part of the land is terminated, an amount bearing to one year's rent the same proportion that the area of that part bears to the area of the whole<sup>14</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 As to the designation 'tenant' see PARA 510 note 10.

3 As to the meaning of 'allotment garden' see PARA 324 note 11.

4 The Allotments Act 1950 s 3(1) refers to 'a local authority' but this should be construed as referring to the authorities empowered to lease and let land for allotments: see PARA 520.



5 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

6 Allotments Act 1950 s 3(1)(a). The reference in the text to 'statutory re-entry' is a reference to re-entry under the Allotments Act 1922 s 1(1)(b), (c) or (d) (see PARA 564).

The Allotments Act 1950 s 3 applies whether the land was let before or after 26 October 1950 (ie the date on which the Allotments Act 1950 was passed) (s 3(1)), but does not apply to any parcel of land attached to a cottage or let under the Defence (General) Regulations 1939, SR & O 1939/927, reg 62A (revoked) or under the Emergency Laws (Miscellaneous Provisions) Act 1953 s 5 (s 5(3); Allotments Act 1950 s 6). These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993); Allotments Act 1950 s 7. As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

7 As to the meaning of 'landlord' see PARA 510 note 10.

8 Allotments Act 1950 s 3(1)(b). See note 6.

9 ie under the Allotments Act 1922 s 10 (see PARA 553).

10 Allotments Act 1950 s 3(1)(c). See note 6.

11 Allotments Act 1950 s 3(1). See note 6.

12 Allotments Act 1950 s 3(3). As to such compensation see PARA 567.

13 Allotments Act 1950 s 3(2)(a).

14 Allotments Act 1950 s 3(2)(b).

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## 569. Landlord's compensation for deterioration of allotment.

Where the tenant<sup>1</sup> of land<sup>2</sup> let for use as an allotment garden<sup>3</sup> quits the land on the termination of his tenancy, the landlord<sup>4</sup> is entitled, notwithstanding any agreement to the contrary, to recover from the tenant compensation in respect of any deterioration of the land caused by the tenant's failure to maintain it clean and in a good state of cultivation and fertility<sup>5</sup>. The amount of any such compensation is the cost, as at the date of the tenant's quitting the land, of making good the deterioration<sup>6</sup>.

Where the tenant has remained on the land during two or more tenancies the landlord is not deprived of his right to compensation for deterioration by reason only that the tenancy during which part or all of the deterioration occurred was a tenancy other than that at the termination of which the tenant quitted the land<sup>7</sup>.

1 As to the designation 'tenant' see PARA 510 note 10.

2 As to the meaning of 'land' see PARA 324 note 5.

3 As to the meaning of 'allotment garden' see PARA 324 note 11.

4 As to the meaning of 'landlord' see PARA 510 note 10.

5 Allotments Act 1950 s 4(1). Section 4 is applied and disapplied in the circumstances in which s 3 is applied and disapplied: see PARA 568 note 6.

6 Allotments Act 1950 s 4(2).

7 Allotments Act 1950 s 4(3).

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### **570. Compensation payable by mortgagee to dispossessed allotment tenant.**

Where a contract of tenancy, not being a farm business tenancy<sup>1</sup>, in respect of an allotment<sup>2</sup> or allotment garden<sup>3</sup> is made with a mortgagor but is not binding on the mortgagee, the tenant<sup>4</sup> is entitled, if deprived of possession by the mortgagee, to recover compensation<sup>5</sup>, including compensation for disturbance<sup>6</sup>, from him as if he were the landlord<sup>7</sup> and had terminated the tenancy, but subject to the deduction from the compensation of rent or other sums due from the tenant in respect of the land<sup>8</sup>.

1 Ie within the meaning of the Agricultural Tenancies Act 1995 s 1 (see PARAS 302, 517).

2 As to the meaning of 'allotment' in this context see the Allotments Act 1922 s 3(7); and PARA 510.

3 As to the meaning of 'allotment garden' see PARA 324 note 11.

4 As to the designation 'tenant' see PARA 510 note 10.

5 Ie under the Allotments Act 1922 ss 2, 3 (see PARAS 567, 578).

6 Ie under the Allotments Act 1950 s 3 (see PARA 568): s 3(4).

7 As to the meaning of 'landlord' see PARA 510 note 10.

8 Allotments Act 1922 s 4(2). These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

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### **571. Compensation to allotment tenant for fruit trees, bushes or other improvements.**

A tenant<sup>1</sup> of an allotment<sup>2</sup> who has paid compensation to an outgoing tenant for fruit trees or bushes or other improvements has the same rights as to compensation or removal as he would have had if the trees or bushes had been provided and planted or the improvement made by him and at his expense<sup>3</sup>.

1 As to the designation 'tenant' see PARA 510 note 10.

2 As to the meaning of 'allotment' see PARA 510.

3 Allotments Act 1922 s 5. These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

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## 572. Adjustment of tenancy compensation in case of allotment gardens.

Out of any money payable to the tenant<sup>1</sup> of an allotment garden<sup>2</sup> by way of statutory compensation<sup>3</sup> or compensation for disturbance<sup>4</sup>, the landlord<sup>5</sup> is entitled to deduct any sum due to him from the tenant under or in respect of the tenancy, including compensation<sup>6</sup> for deterioration<sup>7</sup>. Similarly, out of any money due to the landlord in respect of the tenancy, including compensation for deterioration, the tenant is entitled to deduct any money due to him from the landlord by way of compensation for crops or manure or for disturbance<sup>8</sup>.

1 As to the designation 'tenant' see PARA 510 note 10.

2 As to the meaning of 'allotment garden' see PARA 324 note 11.

3 Ie compensation under the Allotments Act 1922 s 2 (see PARA 567).

4 Ie under the Allotments Act 1950 s 3 (see PARA 568).

5 As to the meaning of 'landlord' see PARA 510 note 10.

6 Ie under the Allotments Act 1950 s 4 (see PARA 569).

7 Allotments Act 1950 s 5(1). These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993); Allotments Act 1950 s 7. As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

8 Allotments Act 1950 s 5(2).

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### **573. Removal of improvements made by tenant of allotments and allotment gardens.**

Fruit trees and bushes provided and planted by a tenant of land<sup>1</sup> held under a contract of tenancy of an allotment garden<sup>2</sup> or certain allotments<sup>3</sup>, and any erection, fencing or other improvement erected or made by him and at his expense or in respect of which he has paid compensation to an outgoing tenant<sup>4</sup> may be removed by him before the expiration of the tenancy, provided he makes good any injury caused by the removal<sup>5</sup>. The tenant of an allotment, who is not a tenant under a farm business tenancy<sup>6</sup>, may also, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him, and any tool-house, shed or greenhouse built or acquired by him, for which he has no claim for compensation<sup>7</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 As to the meaning of 'allotment garden' see PARA 324 note 11.

3 Ie under the Allotments Act 1922 ss 1-3 (see PARAS 564, 567). As to the meaning of 'allotment' see PARA 510.

4 As to the designation 'tenant' see PARA 510 note 10.

5 Allotments Act 1922 ss 4(1), 5. These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

6 Ie within the meaning of the Agricultural Tenancies Act 1995 s 1 (see PARAS 302, 517): see the Small Holdings and Allotments Act 1908 s 47(5) (s 47(4) amended, s 47(5) added, by the Agricultural Tenancies Act 1995 Schedule para 1(1), (5), (6)).

7 Small Holdings and Allotments Act 1908 s 47(4) (as amended: see note 6).

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### **574. Assessment and recovery of compensation in case of allotments.**

In default of agreement, the compensation<sup>1</sup> under a contract of a tenancy, not being a farm business tenancy<sup>2</sup>, must be assessed by the valuation of a person who, unless agreed upon by the landlord and tenant<sup>3</sup>, must be appointed by the judge of the local county court<sup>4</sup>. If the amount agreed or determined is not paid within 14 days it may be recovered upon order made by the county court as money ordered to be paid by that court under its ordinary jurisdiction is recoverable<sup>5</sup>.

The valuer's proper charges are borne by the landlord and tenant in such proportion as the valuer directs, but he may recover them from either party, and any amount paid by one party in excess of the amount the valuer directs to be borne by that party is recoverable from the other party or can be deducted from the compensation payable<sup>6</sup>.

1    le compensation under the Allotments Act 1922 or under the Allotments Act 1950, and such further compensation, if any, as is recoverable under the contract of tenancy.

2    le within the meaning of the Agricultural Tenancies Act 1995 s 1 (see PARAS 302, 517).

3    As to the meaning of 'landlord', and the designations 'landlord' and 'tenant', see PARA 510 note 10.

4    Allotments Act 1922 s 6(1) (amended by the Agricultural Tenancies Act 1995 Schedule para 4); Allotments Act 1950 s 7. An application in writing is required to be made for this purpose by the landlord or the tenant: Allotments Act 1922 s 6(1). These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

5    Allotments Act 1922 s 6(1).

6    Allotments Act 1922 s 6(2).

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### **575. Compensation to allotment tenant at end of council's occupation.**

Unless the contract of tenancy otherwise provides, a tenant<sup>1</sup> to whom land<sup>2</sup> has been let by a London borough or district or, in Wales, a county or county borough council<sup>3</sup> under its power in relation to unoccupied land<sup>4</sup> and whose tenancy is terminated by the termination of the council's right of occupation, is entitled to recover from the council such compensation, if any, as would have been recoverable if his tenancy had been terminated by notice to quit given by the council, and has the same right to remove his crops as if the tenancy had been so terminated<sup>5</sup>. If, however, the rent payable by the tenant exceeds 1p per quarter acre<sup>6</sup> the tenant is entitled to claim compensation notwithstanding any agreement in the contract of tenancy to the contrary<sup>7</sup>. Compensation for disturbance also may be claimed by the tenant notwithstanding any such agreement<sup>8</sup>.

1    As to the designation 'tenant' see PARA 510 note 10.

2    As to the meaning of 'land' see PARA 324 note 5.

3    The Allotments Act 1922 s 10 refers to 'the council of a borough or urban district' but this should be construed as a reference to the authorities empowered thereunder to enter on unoccupied land for the purposes of providing allotments: see PARAS 520, 553. As to the meaning of 'allotment' see PARA 510.

4    le under the Allotments Act 1922 s 10 (see PARA 553).

5    Allotments Act 1922 s 10(4). As to compensation and the removal of crops see PARA 566 et seq.

6 The Allotments Act 1925 s 7 as drafted refers to '1p per pole'. However, the pole (30¼ square yards) is no longer recognised as a unit of area and an area of one quarter of an acre has accordingly been substituted.

7 Allotments Act 1925 s 7 (amended by virtue of the Decimal Currency Act 1969 s 10(1) and the Statute Law (Repeals) Act 1993).

8 See the Allotments Act 1950 s 3(1)(c); and PARA 568.

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## (C) OTHER ALLOTMENTS

### **576. Compensation for allotments that are agricultural holdings.**

Where an allotment<sup>1</sup> is an agricultural holding<sup>2</sup> the tenant may claim compensation for improvements and tenant right matters, for disturbance and for the continuous adoption of a special system of farming in accordance with the provisions of the Agricultural Holdings Act 1986 in that behalf<sup>3</sup>, and has the rights of removing fixtures conferred on tenants of such holdings<sup>4</sup>. He is liable to pay compensation to his landlord for deterioration to the holding<sup>5</sup>.

In the case of certain allotments of not more than two acres<sup>6</sup> which are also agricultural holdings, the tenant<sup>7</sup> may alternatively claim compensation in accordance with the provisions of the Allotments Act 1922<sup>8</sup>.

1 As to the meaning of 'allotment' see PARA 510.

2 Ie within the meaning of the Agricultural Holdings Act 1986 s 1(1) (see PARA 323). These provisions do not apply to allotments held under farm business tenancies, for which special provision is made: see PARA 577.

3 See PARAS 451-452.

4 See PARA 336.

5 See PARAS 456-463.

6 Ie 'allotments' as defined in the Allotments Act 1922 s 3(7) (see PARAS 510, 578).

7 As to the designation 'tenant' see PARA 510 note 10.

8 Allotments Act 1922 s 3(5) (amended by the Agricultural Holdings Act 1986 Sch 14 para 9). As to these provisions see PARA 567 et seq. The tenant of an allotment let by a district, parish, London borough, or, in Wales, a community, county or county borough council may claim compensation for certain improvements as if the allotment were a market garden within the Agricultural Holdings Act 1986 s 79 (see PARA 464) or alternatively under the Allotments Act 1922 s 3, even if the allotment exceeds two acres: see the Small Holdings and Allotments Act 1908 s 47(1), (3); and PARA 579. The Small Holdings and Allotments Act 1908 s 47(3) refers to 'a council' but this should be construed as meaning the authorities referred to above, ie those empowered to let land for allotments: see PARA 520.

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### **577. Compensation for allotments that are farm business tenancies.**

Where allotments<sup>1</sup> are let under a farm business tenancy<sup>2</sup>, any compensation payable to the tenant will be in accordance with the statutory provisions as to compensation on the termination of such tenancies<sup>3</sup> and not under the Allotments Acts<sup>4</sup>. The tenant is entitled to compensation for improvements which add to the letting value of the holding on the determination of the tenancy<sup>5</sup>. No compensation will be payable unless the landlord, or for improvements other than planning permission<sup>6</sup> the landlord or arbitrator, has given consent to the improvements<sup>7</sup>. There are no special provisions for market gardens.

1 As to the meaning of 'allotment' see PARA 510.

2 Ie within the meaning of the Agricultural Tenancies Act 1995 s 1 (see PARAS 302, 517).

3 Ie the Agricultural Tenancies Act 1995 Pt III (ss 15-27) (see PARAS 310-319).

4 Small Holdings and Allotments Act 1908 s 47(1), (5) (s 47(1) amended, s 47(5) added, by the Agricultural Tenancies Act 1995 Schedule para 1(1), (2), (6)); Allotments Act 1922 s 3(7) (amended by the Agricultural Tenancies Act 1995 Schedule para 3).

5 See the Agricultural Tenancies Act 1995 ss 16, 20, 21; and PARAS 311, 313-314.

6 Improvements are defined to include physical improvements and intangible improvements such as planning permission: see the Agricultural Tenancies Act 1995 s 15; and PARA 310.

7 See the Agricultural Tenancies Act 1995 s 17; and PARA 311.

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### **578. Compensation for allotments not exceeding two acres.**

The tenant<sup>1</sup> of an allotment<sup>2</sup> of not more than two acres in extent, whether attached to a cottage or not, but not being an allotment garden<sup>3</sup>, and which is cultivated as a farm or a garden, or partly as a garden and partly as a farm<sup>4</sup>, is entitled, on the termination of his tenancy by effluxion of time or from any other cause, and notwithstanding any agreement to the contrary, to obtain from the landlord<sup>5</sup> compensation for:

- 266 (1) crops, including fruit, growing on the land in the ordinary course of cultivation, and for labour expended on and manure applied to the land<sup>6</sup>; and
- 267 (2) fruit trees or bushes provided and planted by the tenant with the landlord's previous written consent, and drains, outbuildings, pigsties, fowlhouses or other structural improvements made or erected by the tenant and at his expense with such consent<sup>7</sup>.

The compensation is based on the value to an incoming tenant of the crops and other subjects of compensation<sup>8</sup>.

Any sum due to the landlord from the tenant in respect of rent, any breach of the contract of tenancy, or wilful or negligent damage committed or permitted by the tenant, must be deducted from the compensation<sup>9</sup>, and, in default of agreement, the amount of compensation is determined and recovered as in the case of allotment gardens<sup>10</sup>.

The tenant has the same right to remove fruit trees, bushes and fixtures, and to compensation where deprived of possession by a mortgagee or where he has paid compensation to an outgoing tenant, as has the tenant of an allotment garden<sup>11</sup>.

Where the allotment is an agricultural holding<sup>12</sup> a claim for compensation may alternatively (but not additionally) be made under the Agricultural Holdings Act 1986<sup>13</sup>.

1 As to the designation 'tenant' see PARA 510 note 10.

2 As to the meaning of 'allotment' see PARA 510. These provisions do not apply to allotments held under farm business tenancies, for which special provision is made; see the Small Holdings and Allotments Act 1908 s 47(1); and PARA 577. These provisions also do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

3 As to the meaning of 'allotment garden' see PARA 324 note 11.

4 Allotments Act 1922 s 3(7) (amended by the Agricultural Tenancies Act 1995 Schedule para 3).

5 As to the meaning of 'landlord' see PARA 510 note 10.

6 Allotments Act 1922 s 3(2)(a). Compensation under this provision in respect of allotments exceeding two acres and let by a district, parish, London borough, or, in Wales, a community, county or county borough council may also be claimed at the tenant's election under the Small Holdings and Allotments Act 1908 s 47(3) (see PARA 579).

7 Allotments Act 1922 s 3(2)(b). See note 6.

8 Allotments Act 1922 s 22(3).

9 Allotments Act 1922 s 3(3).

10 Allotments Act 1922 s 3(4). As to compensation for allotment gardens see PARA 567.

11 See the Allotments Act 1922 ss 4, 5; and PARAS 571, 573.

12 Ie within the meaning of the Agricultural Holdings Act 1986 s 1(1) (see PARA 323).

13 See the Allotments Act 1922 s 3(5) (amended by the Agricultural Holdings Act 1986 Sch 14 para 9). It would appear that where an application is made under the Agricultural Holdings Act 1986 the whole of that Act, including the provisions as to the measure and recovery of compensation, will apply: see *Stevens v Sedgman* [1951] 2 KB 434 at 440, [1951] 2 All ER 33 at 35, CA, per Somervell LJ.

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## 579. Compensation for allotments let by council.

The tenant of an allotment<sup>1</sup> let to him by a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>2</sup> has, as against the council, the same rights with respect to compensation for improvements effected by planting standard or other fruit trees or fruit bushes permanently set out, and planting strawberry plants and asparagus, rhubarb and other vegetable crops which continue productive for two or more years, as if it had been



agreed in writing that the allotment should be let under the Agricultural Holdings Act 1986 as a market garden<sup>3</sup>. The tenant is not, however, entitled to compensation for such improvements if executed contrary to an express written prohibition by the council<sup>4</sup>.

The tenant of an allotment provided by a council<sup>5</sup> may, if he so elects, claim compensation for improvements under the provisions applicable to allotments not exceeding two acres<sup>6</sup>, instead of claiming as if the allotment were let as a market garden, notwithstanding that the allotment exceeds two acres<sup>7</sup>.

1 As to the meaning of 'allotment' see PARA 510. These provisions do not apply to allotments held under farm business tenancies, for which special provision is made (see PARA 577).

2 The Small Holdings and Allotments Act 1908 s 47 refers to 'a council' but this should be construed as referring to the authorities empowered to let land for allotments, ie those referred to in the text: see PARA 510.

3 Small Holdings and Allotments Act 1908 s 47(1), Sch 2 Pt I (s 47(1) amended by the Agricultural Tenancies Act 1995 Schedule para 1(1), (2)); Agricultural Holdings Act 1986 s 79. As to compensation for market gardens see PARAS 464-468.

4 Small Holdings and Allotments Act 1908 s 47(1) proviso (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 1(c), Sch 34 Pt VI).

5 Ie an allotment to which the Small Holdings and Allotments Act 1908 Pt II (ss 23-35) applies.

6 Ie an allotment as defined in the Allotments Act 1922 s 3(7) (see PARA 578).

7 Small Holdings and Allotments Act 1908 s 47(3) (amended by the Agricultural Tenancies Act 1995 Schedule para 1(1), (4); and by the Statute Law (Repeals) Act 1993).

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## (D) COMPENSATION TO COUNCILS OR ASSOCIATIONS AS TENANTS

### **580. Compensation for land let for allotment gardens.**

Where land<sup>1</sup> is let to a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>2</sup>, or an association<sup>3</sup>, under a contract of tenancy made after 4 August 1922<sup>4</sup> for the purpose of being sublet for use by the tenants<sup>5</sup> as allotment gardens<sup>6</sup>, the council or association may claim compensation for improvements in the same manner as may individual tenants of allotment gardens<sup>7</sup>, notwithstanding that the crops have been grown and the manure applied by the subtenants<sup>8</sup>. The council or association may also claim compensation for disturbance in respect of land let to it for subletting as allotment gardens<sup>9</sup>.

1 As to the meaning of 'land' see PARA 324 note 5. These provisions do not apply to land forming part of a Royal Park; otherwise, they apply to land vested in Her Majesty in right of the Crown or the Duchy of Lancaster, and to land forming part of the possessions of the Duchy of Cornwall, and, except as before provided, to land vested in any government department for public purposes: Allotments Act 1922 s 7 (amended by the Statute Law (Repeals) Act 1993). As to the management of the Royal Parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 560 et seq. As to the Crown Estate see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 278 et seq. As to the Duchies of Lancaster and Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300-353.

2 The Allotments Act 1922 s 2(6) refers to 'a local authority' but this should be construed as referring to the authorities empowered to lease and let land for allotments, ie those referred to in the text: see PARA 520.

3 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

4 le the date on which the Allotments Act 1922 was passed.

5 As to the designation 'tenant' see PARA 510 note 10.

6 As to the meaning of 'allotment garden' see PARA 324 note 11.

7 See PARA 567.

8 Allotments Act 1922 s 2(6).

9 See the Allotments Act 1950 s 3(1); and PARA 568.

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### **581. Compensation for land let for allotments.**

Where land<sup>1</sup> is let for the provision of allotments<sup>2</sup>, other than allotment gardens<sup>3</sup>, to a district, parish, London borough, or, in Wales, a community, county or county borough council<sup>4</sup>, or to an allotments association<sup>5</sup>, the right of the council or association to claim compensation from the landlord<sup>6</sup> on the determination of the tenancy is subject to the terms of the contract of tenancy, notwithstanding the provisions of any Act to the contrary<sup>7</sup>.

On the determination of a tenancy of land<sup>8</sup> hired by a council<sup>9</sup>, whether compulsorily<sup>10</sup> or by agreement<sup>11</sup>, the council, on quitting the land, is entitled, subject to any provision to the contrary in the agreement or order for hiring, to compensation under the Agricultural Holdings Act 1986<sup>12</sup> for any improvement in respect of<sup>13</sup>:

268 (1) the planting of standard or other fruit trees or fruit bushes permanently set out, or the planting of strawberry plants or of asparagus, rhubarb and other vegetable crops which continue productive for two or more years<sup>14</sup>; and

269 (2) any of:

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15. (a) the erection, alteration, or enlargement of buildings<sup>15</sup>;

16. (b) the formation of silos<sup>16</sup>;

17. (c) the laying down of permanent pasture<sup>17</sup>;

18. (d) the making and planting of osier beds<sup>18</sup>;

19. (e) the making of water meadows or works of irrigation<sup>19</sup>;

20. (f) the making of gardens<sup>20</sup>;

21. (g) the making or improvement of roads or bridges<sup>21</sup>;

22. (h) the making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes<sup>22</sup>;

23. (i) the making or removal of permanent fences<sup>23</sup>;

24. (j) the planting of hops<sup>24</sup>;

25. (k) the planting of orchards or fruit bushes<sup>25</sup>;

26. (l) the protection of young fruit trees<sup>26</sup>;

27. (m) the reclamation of waste land<sup>27</sup>;

28. (n) the warping or weiring of land<sup>28</sup>;

- 29. (o) the making of embankments and sluices against floods<sup>29</sup>;
- 30. (p) the erection of wirework in hop gardens<sup>30</sup>;
- 31. (q) drainage<sup>31</sup>;
- 32. (r) the provision of permanent sheep-dipping accommodation<sup>32</sup>; and
- 33. (s) in the case of arable land, the removal of bracken, gorse, tree roots, boulders, and other like obstructions to cultivation<sup>33</sup>,

8

where such improvement was necessary and proper to adapt the land for allotments<sup>34</sup>.

1 As to the meaning of 'land' see PARA 324 note 5.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the meaning of 'allotment garden' see PARA 324 note 11.

4 Ie under the Small Holdings and Allotments Act 1908: see s 25; and PARA 526. The Allotments Act 1922 s 2(6) refers to 'a local authority' but this should be construed as referring to the authorities empowered to lease and let land for allotments, ie those referred to in the text: see PARA 520.

5 Local authorities were empowered to provide allotments to co-operative societies and allotment associations under the Small Holdings and Allotments Act 1926 s 3(b) (repealed) (extended by the Small Holdings and Allotments Act 1908 s 27(6)). See also the Allotments Act 1922 s 15; and PARA 491.

6 As to the meaning of 'landlord' see PARA 510 note 10.

7 Land Settlement (Facilities) Act 1919 s 23; Allotments Act 1922 s 2(6). This provision does not prejudice or affect the tenant's right to claim compensation from the council on the determination of his tenancy (as to which see PARA 579): Land Settlement (Facilities) Act 1919 s 23 proviso.

8 These provisions do not apply to allotments held under farm business tenancies, for which special provision is made (see PARA 577).

9 The Small Holdings and Allotments Act 1908 s 47(2) refers to 'a council' but this should be construed as referring to the authorities empowered to hire land for allotments: see the text and note 4; and PARA 520.

10 As to the compulsory hiring of land see PARA 534 et seq. In the case of land hired compulsorily the compensation is such sum as fairly represents the increase, if any, in the value to the landlord and his successors in title of the land due to such improvements: Small Holdings and Allotments Act 1908 s 47(2) proviso.

11 As to the hiring of land for allotments by agreement see PARA 526 et seq.

12 Compensation may be claimed under the Agricultural Holdings Act 1986 as if the land were a holding which it was agreed in writing under s 79 should be let as a market garden and as if the improvements specified in the text were comprised in Schs 8, 10: Small Holdings and Allotments Act 1908 s 47(2) (amended by the Agricultural Holdings Act 1986 Sch 14). As to compensation for market gardens see PARAS 464-468.

13 Small Holdings and Allotments Act 1908 s 47(2) (amended by the Land Settlement (Facilities) Act 1919 Sch 2; the Agricultural Holdings Act 1986 Sch 14 para 1; and the Agricultural Tenancies Act 1995 Schedule para 1(1), (3)).

14 Small Holdings and Allotments Act 1908 Sch 2 Pt I.

15 Small Holdings and Allotments Act 1908 Sch 2 Pt II(1).

16 Small Holdings and Allotments Act 1908 Sch 2 Pt II(2).

17 Small Holdings and Allotments Act 1908 Sch 2 Pt II(3).

18 Small Holdings and Allotments Act 1908 Sch 2 Pt II(4).

19 Small Holdings and Allotments Act 1908 Sch 2 Pt II(5).

- 20 Small Holdings and Allotments Act 1908 Sch 2 Pt II(6).
- 21 Small Holdings and Allotments Act 1908 Sch 2 Pt II(7).
- 22 Small Holdings and Allotments Act 1908 Sch 2 Pt II(8).
- 23 Small Holdings and Allotments Act 1908 Sch 2 Pt II(9).
- 24 Small Holdings and Allotments Act 1908 Sch 2 Pt II(10).
- 25 Small Holdings and Allotments Act 1908 Sch 2 Pt II(11).
- 26 Small Holdings and Allotments Act 1908 Sch 2 Pt II(12).
- 27 Small Holdings and Allotments Act 1908 Sch 2 Pt II(13).
- 28 Small Holdings and Allotments Act 1908 Sch 2 Pt II(14).
- 29 Small Holdings and Allotments Act 1908 Sch 2 Pt II(15).
- 30 Small Holdings and Allotments Act 1908 Sch 2 Pt II(16).
- 31 Small Holdings and Allotments Act 1908 Sch 2 Pt II(17).
- 32 Small Holdings and Allotments Act 1908 Sch 2 Pt II(18) (Sch 2 Pt II(18), (19) added by the Small Holdings and Allotments Act 1926 Sch 1).
- 33 Small Holdings and Allotments Act 1908 Sch 2 Pt II(19) (as added: see note 32).
- 34 Small Holdings and Allotments Act 1908 s 47(2) (as amended: see note 13).

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#### **(iv) Provision of Services and Improvements**

##### **582. General powers of management of allotment land.**

A district council or, in Wales, a county or county borough council<sup>1</sup> may, where it considers it is necessary or expedient to do so for better carrying into effect the Small Holdings and Allotments Acts 1908 to 1931<sup>2</sup>, manage any land acquired by the council under that legislation<sup>3</sup>. Further, the authority has power to execute improvements<sup>4</sup>, sell, mortgage, let or exchange such land<sup>5</sup>, appropriate allotment land for other purposes, and appropriate other land for use as allotments<sup>6</sup>.

1 The Land Settlement (Facilities) Act 1919 s 12(1) refers to a 'district council' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1, 5.

2 As to the Small Holdings and Allotments Act 1908 to 1931 see PARA 488 note 3.

3 Land Settlement (Facilities) Act 1919 s 12(1)(d) (amended by the Local Government Act 1972 Sch 29 Pt II para 10). The exercise of this power is subject to the consent of the Secretary of State or the Welsh Ministers (Land Settlement (Facilities) Act 1919 s 12(1); Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1), (4), (8)), unless the power is being exercised by a county council in respect of land acquired under the Small Holdings and Allotments Act 1926 Pt I (ss 1-15) (acquisition of land for smallholdings: see PARA 490 et seq) (s 20(1)). As to the Secretary of State and the Welsh Ministers see PARA 643.

4 See the Land Settlement (Facilities) Act 1919 s 12(1)(a); and PARA 583.

5 See the Land Settlement (Facilities) Act 1919 s 12(1)(b); and PARA 554.

6 See the Land Settlement (Facilities) Act 1919 s 12(1)(c); and PARAS 552.

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### 583. Improvement and adaptation of allotment land.

A district council or, in Wales, a county or county borough council<sup>1</sup> may, where it considers it is necessary or expedient to do so for the better carrying into effect of the Small Holdings and Allotments Acts 1908 to 1931<sup>2</sup>, erect, repair or improve dwelling houses and other buildings on any land<sup>3</sup> acquired by it for the purposes of allotments<sup>4</sup>, or execute any other improvement on or in connection with and for the benefit of any such land, or arrange with the tenant of any such land for the execution of any such improvement on such terms as may be agreed<sup>5</sup>.

A district, parish, London borough or, in Wales, a community, county or county borough council<sup>6</sup> may improve any land acquired by it for allotments and adapt it for letting in allotments, by draining, fencing and dividing the land, acquiring approaches, making roads, and otherwise as it thinks fit<sup>7</sup>. Such a council may also from time to time do such things as may be necessary for maintaining such drains, fences, approaches and roads, or otherwise for maintaining the allotments in a proper condition<sup>8</sup>. It may also adapt the land for allotments by erecting buildings and adapting existing buildings, although not more than one dwelling house may be erected for occupation with any one allotment, and no dwelling house may be erected for occupation with an allotment of less than one acre<sup>9</sup>.

1 The Land Settlement (Facilities) Act 1919 s 12(1) refers to a 'district council' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1, 5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the Small Holdings and Allotments Act 1908 to 1931 see PARA 488 note 3.

3 As to the meaning of 'land' see PARA 324 note 5.

4 As to the acquisition of land for allotments see PARA 521 et seq. As to the meaning of 'allotment' see PARA 510.

5 Land Settlement (Facilities) Act 1919 s 12(1)(a) (amended by the Local Government Act 1972 Sch 29 Pt II para 10). The exercise of this power is subject to the consent of the Secretary of State or the Welsh Ministers (Land Settlement (Facilities) Act 1919 s 12(1); Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1), (4), (8)), unless the power is being exercised by a county council in respect of land acquired under the Small Holdings and Allotments Act 1926 Pt I (ss 1-15) (acquisition of land for smallholdings: see PARA 490 et seq) (s 20(1)). As to the Secretary of State and the Welsh Ministers see PARA 643.

6 The Small Holdings and Allotments Act 1908 s 26 refers to 'the council of any borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5.

7 Small Holdings and Allotments Act 1908 s 26(1).

8 Small Holdings and Allotments Act 1908 s 26(1).

9 Small Holdings and Allotments Act 1908 s 26(2). The building power is permissive, and the council may validly enter into restrictive covenants preventing its exercising the power: *Stourcliffe Estate Co Ltd v Bournemouth Corpn* [1910] 2 Ch 12, CA. The exercise of a council's power to erect, repair or improve dwelling houses or other buildings may be subject to the consent of the Secretary of State or the Welsh Ministers: Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(4).

In general the provision of buildings or the making of any material change in the use of buildings on agricultural land requires planning permission (see the Town and Country Planning Act 1990 s 57; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 236-237), but certain development is allowed without any application for permission being made (see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 2 (Minor Operations), Pt 4 (Temporary Buildings and Uses), Pt 6 (Agricultural Buildings and Operations); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 255, 257, 280-283, 296-299, 302-308).

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#### **584. Power of authorities to provide common pasture and grazing rights.**

Where it appears to the council of any London borough, district or parish or, in Wales, any county, county borough or community<sup>1</sup> that, as regards its area, land<sup>2</sup> can be acquired for affording common pasture at such price or rent that all expenses incurred by the council in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of charges paid in respect of the land, and that the acquisition of such land is desirable in view of the wants and circumstances of the population, the council may prepare and carry into effect a scheme for providing such common pasture<sup>3</sup>. Rules may be made regulating the turning out of animals and fixing the charges to be made for each animal<sup>4</sup>.

The council of any London borough, district or parish or, in Wales, any county, county borough or community<sup>5</sup> may also<sup>6</sup> acquire land for the purpose of letting to tenants of allotments grazing and other similar rights over the land acquired for the allotments, and may acquire for that purpose stints and other alienable common rights of grazing<sup>7</sup>.

1 The Small Holdings and Allotments Act 1908 s 34 refers to 'the council of any borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5.

3 Small Holdings and Allotments Act 1908 s 34(1) (amended by the Land Settlement (Facilities) Act 1919 Schs 2, 3; and the Local Government Act 1972 Sch 29 Pt II para 9(2)). Upon such a scheme being carried into effect the provisions of the Small Holdings and Allotments Act 1908 relating to allotments will, with the necessary modifications, apply in like manner as if 'allotments' in those provisions included common pasture, and 'rent' included a charge for turning out an animal: s 34(2) (amended by the Local Government Act 1972 Sch 29 Pt II para 9(2)).

4 Small Holdings and Allotments Act 1908 s 34(2) (proviso).

5 The Small Holdings and Allotments Act 1908 s 42 refers initially only to 'a council', but in view of the subsequent reference to the powers to acquire land for the purposes of allotments this should be read as a reference to the councils empowered to acquire land for the purposes of that Act, that is to say, the councils referred to in the text.

6 Ie in pursuance of its powers to acquire land for allotments.

7 Small Holdings and Allotments Act 1908 s 42(1) (s 42(1), (2) amended by the Land Settlement (Facilities) Act 1919 Sch 2; Agriculture Act 1947 s 67(2)). Any rights created or acquired by the council under the Small Holdings and Allotments Act 1908 s 42 are to be let to tenants of allotments in such manner and subject to such regulations as the council thinks expedient: s 42(2) (as so amended). As to the acquisition of common rights see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 609. As to stinted pasture see **COMMONS** vol 13 (2009) PARA 417.

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### **585. Provision by authorities of plants, fertilisers and implements.**

Where in the opinion of a London borough, district, parish, or, in Wales, county, county borough or community council<sup>1</sup> there are inadequate facilities for the purchase or hire from a society on a co-operative basis of fruit trees, seeds, plants, fertilisers or implements required for the purposes of allotments<sup>2</sup> cultivated as gardens, whether provided by the council or otherwise, the council may purchase any of those articles and sell them to the cultivators or, in the case of implements, allow their use, at a price or charge sufficient to cover the cost of purchase<sup>3</sup>.

1 The Land Settlement (Facilities) Act 1919 s 21(1) refers to 'the council of any borough, urban district or parish' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

2 As to the meaning of 'allotment' see PARA 510.

3 Land Settlement (Facilities) Act 1919 s 21(1), (2).

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### **586. Use of schoolroom in connection with allotments.**

Provision is made for certain schoolrooms, except while being used for educational purposes, to be used free of charge for the purposes of the Allotments Acts or, with the consent of any two managers or, as the case may be, governors, to be used for public meetings to discuss any question relating to allotments<sup>1</sup>, subject to expenses and any damage being paid for by the council or persons calling the meeting<sup>2</sup>.

Before any public meeting may be so held not less than six days' notice, signed by not less than six resident registered parliamentary electors<sup>3</sup> or council tax payers<sup>4</sup>, must be given to the clerk of the local education authority or, in the case of a voluntary school, to one of the managers or governors<sup>5</sup>. If the room is not then available the clerk, manager or governor must write to one of the signatories, naming some other day when the room will be available<sup>6</sup>.

1 As to the meaning of 'allotment' see PARA 510.

2 Small Holdings and Allotments Act 1908 s 35(1) (amended by the Local Government Act 1972 Sch 30). The Small Holdings and Allotments Act 1908 s 35(1) provides that any room in a county or voluntary primary or secondary school in respect of which a grant is made out of money provided by Parliament may be used for the purposes referred to in the text, and for references to governors to be substituted for references to managers where appropriate: s 35(1) (as so amended); Education Act 1944 ss 9, 120(1)(a), (c) (repealed). Provision for county and voluntary schools (voluntary schools being categorised as either controlled, aided or special agreement schools) continued to be made under the Education Act 1996 Pt II (ss 31-182) (see in particular ss 31, 32) until the repeal of those provisions by the School Standards and Framework Act 1998 s 140(3), Sch 31, and the introduction of a new framework for maintained schools under Pt II (ss 20-83), under which county schools were recategorised as community schools and voluntary schools were recategorised as voluntary controlled schools (if they were formerly controlled schools) or voluntary aided schools (if they were formerly aided or special agreement schools): see s 20, Sch 2 para 1; and **EDUCATION** vol 15(1) (2007 Reissue) PARA 102 et seq. Provision was also made for the redesignation of grant-maintained schools which had formerly been county or voluntary schools: see Sch 2 para 3; and **EDUCATION** vol 15(1) (2007 Reissue) PARA 106.

3 As to the registration of electors see **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 127 et seq.

4 As to liability to council tax see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 231 et seq.

5 Small Holdings and Allotments Act 1908 ss 23(2), 35(2)(a) (s 23(2) amended by the Local Government Finance Act 1992 Sch 13 para 4); Education Act 1944 ss 6, 120(1)(c), Sch 1 (repealed); and see note 2. Any notice required by the Small Holdings and Allotments Act 1908 to be given may be sent by registered post: s 61(5).

6 Small Holdings and Allotments Act 1908 s 35(2)(b).

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### **587. Borrowing powers of authorities in connection with allotments.**

The council of a London borough, district, parish, or, in Wales, county, county borough or community<sup>1</sup> may borrow for the purposes of acquiring, improving and adapting land<sup>2</sup> for allotments<sup>3</sup>. District, London borough, county and county borough councils<sup>4</sup> may borrow for the purposes of making grants to co-operative societies<sup>5</sup>. The Public Works Loan Commissioners may lend money to any local authority for any purpose for which the authority has power to borrow<sup>6</sup>.

1 The Small Holdings and Allotments Act 1908 s 53(4) here refers to 'the council of a borough, urban district or parish' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5.

3 Small Holdings and Allotments Act 1908 s 53(4) (amended by the Land Settlement (Facilities) Act 1919 Sch 2; and the London Government Order 1970, Schedule). As to the meaning of 'allotment' see PARA 510. As to local authority borrowing powers generally see the Local Government Act 2003 Pt 1 (ss 1-24); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq.

4 The Small Holdings and Allotments Act 1908 s 52(1) refers only to county councils, and s 53(4) refers to 'the council of a borough or urban district', but these should be construed as references to the councils referred to in the text: see PARA 520 notes 1-5.

5 Small Holdings and Allotments Act 1908 ss 52(1), 53(4) (s 52(1) amended by the Local Government Act 1929 Sch 12 Pt V; and the Local Government Act 1933 Sch 11 Pt IV; and repealed in its application to Greater London by the London Government Order 1970, SI 1970/211, Schedule; Small Holdings and Allotments Act 1908 s 53(4) as amended (see note 3)). As to grants and advances to co-operative societies see PARA 657. The exercise of a council's powers to determine the period within which any money borrowed by it is to be repaid is subject to the consent of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(6).

6 See the National Loans Act 1968 s 3(11), Sch 4; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1384 et seq.

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### **(v) Disposal and Change of Use of Allotment Land**



## 588. Appropriation by authorities of allotment land for other purposes.

A London borough, district, parish, or, in Wales, county, county borough or community council<sup>1</sup> may, where no power of appropriation is otherwise provided, appropriate for its other purposes land<sup>2</sup> acquired by it for allotments<sup>3</sup>. A district council or, in Wales, a county or county borough council<sup>4</sup> may, where it considers it is necessary or expedient to do so for the better carrying into effect of the applicable legislation<sup>5</sup> and where no power of appropriation is otherwise provided, appropriate for any of its other purposes land acquired by it under that legislation<sup>6</sup>.

Certain local authorities<sup>7</sup> may be authorised, by order made by the authority and confirmed by the Secretary of State or the Welsh Ministers, to appropriate, for any purpose for which it can be authorised to acquire land<sup>8</sup> under any enactment<sup>9</sup>, any land which is or forms part of a common, open space or fuel or field garden allotment<sup>10</sup> and is for the time being held by the council for other purposes<sup>11</sup>. Land so appropriated may be used in any manner in accordance with planning permission notwithstanding anything in any enactment relating to land of that kind<sup>12</sup>.

1 The Land Settlement (Facilities) Act 1919 s 22(1) refers to 'the council of a borough, urban district or parish' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5. As to the local authorities which may be concerned with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5.

3 Land Settlement (Facilities) Act 1919 s 22(1)(b) (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 3, Sch 34 Pt V). As to the meaning of 'allotment' see PARA 510.

4 The Land Settlement (Facilities) Act 1919 s 12(1) refers to a 'district council' but this should be construed as a reference to the councils referred to in the text: see PARA 520 notes 1-5.

5 I.e. the Allotments Acts 1908 to 1950, as to which see PARA 510 note 2.

6 Land Settlement (Facilities) Act 1919 s 12(1)(c)(ii) (amended by the Local Government Act 1972 Sch 29 Pt II para 10). The exercise of this power is subject to the consent of the Secretary of State or the Welsh Ministers (Land Settlement (Facilities) Act 1919 s 12(1) (as so amended); Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(2), (8)), unless the power is being exercised by a county council in respect of land acquired under the Small Holdings and Allotments Act 1926 Pt I (ss 1-15) (acquisition of land for smallholdings: see PARA 490 et seq) (s 20(1)). The exercise of the power is also subject to such conditions as to the repayment of any loan made for the purpose of the acquisition of the land or otherwise as the Secretary of State or the Welsh Ministers may impose (Land Settlement (Facilities) Act 1919 s 12(1)(c) (as so amended)). As to the Secretary of State and the Welsh Ministers see PARA 643.

7 I.e. the authorities which are local authorities for the purposes of the Town and Country Planning Act 1990: see s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 3.

8 For these purposes 'land' includes any corporeal hereditament, including a building, and, in relation to any acquisition of land under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 934 et seq), includes any interest in or right over land: s 336(1).

9 'Enactment' includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament: Town and Country Planning Act 1990 s 336(1).

10 'Fuel or field garden allotment' means any allotment set out as a fuel or field garden allotment under an Inclosure Act: Town and Country Planning Act 1990 s 336(1). The land which may come within this definition for these purposes includes any such land which is specially regulated by any enactment, whether public general or local or private, but not land which is Green Belt land within the meaning of the Green Belt (London and Home Counties) Act 1938: Town and Country Planning Act 1990 s 229(2). The Inclosure Acts are the Inclosure Acts 1845 to 1882, as to which see **COMMONS** vol 13 (2009) PARA 419 et seq. As to field garden allotments and fuel allotments generally see PARAS 512-513. As to the meaning of 'Green Belt land' for the purposes of the Green Belt (London and Home Counties) Act 1938 see s 2(1); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 938.

11 Town and Country Planning Act 1990 s 229(1), (2); and see further **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947. Where the appropriation is under the general statutory provisions relating to the appropriation of land by local authorities (ie the Local Government Act 1972 ss 122, 126), the total amount of land appropriated in any particular common, fuel or field garden allotment must not exceed in aggregate 250 square yards, notice of the proposed appropriation must be advertised and objections considered, and the appropriation will be subject to the rights of other persons in, over and in respect of the land: see ss 122(1), (2), (2A), 126(3), (4), (4A); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 518.

12 See the Town and Country Planning Act 1990 ss 241(1)(b), 246(3); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 962.

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### **589. Sale or exchange by authorities of surplus allotment land.**

Where a district, parish, London borough or, in Wales, a community, county or county borough council<sup>1</sup> is of the opinion that any land<sup>2</sup> acquired by it for allotments<sup>3</sup>, or any part of any such land, is not needed for the purpose of allotments, or that more suitable land is available, it may sell<sup>4</sup> or let<sup>5</sup> the land<sup>6</sup>, or exchange the land for more suitable land, and may pay or receive money for equality of exchange<sup>7</sup>.

Where, however, a district, parish, London borough, community, county or county borough council<sup>8</sup> has purchased or appropriated land for allotments<sup>9</sup>, it must not sell, appropriate, use or dispose of the land for any purpose other than for allotments without the consent of the Secretary of State or the Welsh Ministers<sup>10</sup>.

1 The Small Holdings and Allotments Act 1908 s 32 refers to 'the council of any borough, urban district or parish' but should be construed as referring to the authorities mentioned in the text: see PARA 520 notes 1-5. As to the powers of local authorities in connection with the provision of allotments generally see PARA 520.

2 As to the meaning of 'land' see PARA 324 note 5.

3 As to the acquisition of land for allotments see PARA 521 et seq. As to the meaning of 'allotment' see PARA 510.

4 The proceeds of a sale of land acquired for allotments, and any money received by the council on any exchange by way of equality of exchange, must be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by it for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied, and the interest thereon (if any) may be applied in acquiring other land for allotments, or must be applied in like manner as receipts from allotments under the Allotments Acts 1908 to 1950 are applicable: Small Holdings and Allotments Act 1908 s 32(2) (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 1(b), Sch 34 Pt V). As to the Allotments Acts 1908 to 1950 see PARA 510 note 2.

5 Any money received from the letting of the land may be applied in acquiring other land for allotments, or must be applied in like manner as receipts from allotments under the Allotments Acts 1908 to 1950 are applicable: Small Holdings and Allotments Act 1908 s 32(2) (as amended: see note 4).

6 Ie otherwise than under the provisions of the Allotments Acts 1908 to 1950.

7 Small Holdings and Allotments Act 1908 s 32(1) (amended by the Local Government Act 1972 Sch 30). As to the application of the proceeds of an exchange see note 4. Acquisitions and disposals of land for the purposes of the provision of allotments generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). As to the Secretary of State and the Welsh Ministers see PARA 643.

8 The Allotments Act 1925 s 8 refers here to 'a local authority' but this should be construed as referring to the authorities empowered to purchase or appropriate land for use as allotments, ie those mentioned in the text: see PARA 520.

9 For the power to purchase or appropriate land for allotments see PARAS 523, 531, 552.

10 Allotments Act 1925 s 8 (amended by the Agricultural Land (Utilisation) Act 1931 Sch 2; the Statute Law (Repeals) Act 1993; and SI 1955/554). See also the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1). Consent may be given unconditionally or subject to such conditions as the Secretary of State or the Welsh Ministers think fit, but may not be given unless the Secretary of State or the Welsh Ministers is or are satisfied that adequate provision will be made for allotment holders displaced by the action of the council or that such provision is unnecessary or not reasonably practicable: Allotments Act 1925 s 8 (as so amended). The matter of the making or otherwise of 'adequate provision' is determinable with reference to the reasonable needs of the displaced allotment holders and not to the standard of provision previously enjoyed: *R v Secretary of State for the Environment, ex p Gosforth Allotments and Gardens Association* (1996) 74 P & CR 93, [1996] 2 EGLR 117, CA.

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#### **590. Appropriation by authorities of field garden allotments for development or other planning purposes.**

A district, London borough, or, in Wales, county or county borough council may, in the exercise of its powers to acquire land compulsorily for development or other planning purposes<sup>1</sup>, appropriate, for any purpose for which it can be authorised to acquire land under any enactment, any land held by it for other purposes, being land which is or forms part of a field garden allotment<sup>2</sup>. In so far as a compulsory purchase or appropriation order authorises the purchase or appropriation of land forming part of a field garden allotment the order is subject to special parliamentary procedure<sup>3</sup> unless the Secretary of State or the Welsh Ministers<sup>4</sup> is or are satisfied that equivalent land has been or will be given in exchange, vested in the same persons and subject to the same rights, trusts and incidents, or that the land is required for the widening of an existing highway and that it is unnecessary to give other land in exchange, and certifies accordingly<sup>5</sup>.

1 Ie under the Town and Country Planning Act 1990 s 226(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934).

2 See the Town and Country Planning Act 1990 s 226(1), (3); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934. As to field garden allotments see PARA 512.

3 As to special parliamentary procedure see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 605.

4 As to the Secretary of State and the Welsh Ministers see PARA 643.

5 See the Acquisition of Land Act 1981 s 19; Town and Country Planning Act 1990 s 229(3); **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 947. Exchanges of land generally require the approval of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(1).

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## **(5) COTTAGE HOLDINGS**

### **(i) Introduction**

#### **591. Meaning of 'cottage holding'.**

'Cottage holding' means a holding comprising a dwelling house, together with not less than a quarter of an acre<sup>1</sup> and not more than one acre of agricultural<sup>2</sup> land which can be cultivated by the occupier of the dwelling house and his family<sup>3</sup>.

1 The Agricultural Land (Utilisation) Act 1931 as drafted refers to 'forty perches': however, the perch (30¼ square yards) is no longer recognised as a unit of area and the area 'one quarter of an acre' has accordingly been substituted.

2 As to the meaning of 'agriculture' see PARA 324 note 5.

3 Agricultural Land (Utilisation) Act 1931 s 20(1).

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#### **592. Cottage holdings before and after 1970.**

Until 1 August 1970<sup>1</sup> cottage holdings could be acquired, bought, sold and let by county councils, county borough councils<sup>2</sup> and the Greater London Council<sup>3</sup>, acting as cottage holding authorities<sup>4</sup>. Cottage holdings could be provided for sale or letting to any person who in the council's opinion was suitable and who satisfied the council that he would reside permanently in the dwelling house comprised in the holding, and that he had the intention, knowledge and capital to cultivate satisfactorily the land forming part of the holding<sup>5</sup>, and detailed statutory provisions governed their disposition, management and use<sup>6</sup>.

Since 1 August 1970 councils<sup>7</sup> have no longer been empowered to sell or let land as a cottage holding or acquire land for the purpose of being sold or let as a cottage holding<sup>8</sup>. The policy has accordingly been to allow existing cottage holdings, which are few in number, to run down and ultimately disappear, experience having shown that the cottage holding is not a viable agricultural unit and that in practice there has been a tendency for them to be confused, by local authorities as well as by occupiers, with smallholdings<sup>9</sup>. Accordingly, in this title the law relating to cottage holdings is treated in detail only where it remains of importance<sup>10</sup>.

1 ie the day on which the provisions of the Agriculture Act 1970 relating to cottage holdings (ie Pt III (ss 37-65)) were brought into force by the Agriculture Act 1970 (Commencement No 2) Order 1970, SI 1970/1048.

2 Owing to the cessation of the powers to provide cottage holdings in 1970 (see PARA 598), this is in effect a reference to the counties and county boroughs in England and Wales, and their councils, as they were constituted prior to the reorganisation of local authorities effected by the Local Government Act 1972. A county or county borough council had power to delegate its powers in this regard to a district council: Small Holdings and Allotments Act 1926 s 9 (amended by the Local Government Act 1972 Sch 30; and the Statute Law (Repeals) Act 1993); Agricultural Land (Utilisation) Act 1931 s 12(1) (amended by the Agriculture Act 1970 Sch 4).

3 The Greater London Council was abolished by the Local Government Act 1985 s 1; see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 33.

4 See the Small Holdings and Allotments Act 1926 s 4 (repealed), and the Agricultural Land (Utilisation) Act 1931 s 12(1) (as amended: see note 2). A seller of land to a council for cottage holdings could sell the land to the council in consideration of a perpetual annuity payable by the council: see the Land Settlement (Facilities) Act 1919 s 9, Sch 1 (both as amended); and the Land Settlement (Annuities) Regulations 1919, SR & O 1919/1961 (as modified by SI 2003/1633).

5 See the Small Holdings and Allotments Act 1926 s 1 (repealed); and the Agricultural Land (Utilisation) Act 1931 s 12(1) (as amended: see note 2). As in the case of smallholdings, councils could make advances towards the purchase price of a cottage holding: Small Holdings and Allotments Act 1926 s 13(1) (amended by the Agricultural Land (Utilisation) Act 1931 Sch 2). The Small Holdings and Allotments Act 1926 s 5 (see PARA 593) and s 6 (see PARA 595) applied to a terminable annuity so charged on a holding so purchased as if the advance was the purchase money: Small Holdings and Allotments Act 1926 s 13(2). Councils were also required to maintain a list of owners and occupiers of cottage holdings sold or let by them, and a map or plan showing the size, boundaries and situation of each holding (Small Holdings and Allotments Act 1926 s 10): to the extent that this requirement continues to have effect the councils likely to be affected by it are the successor bodies of the councils which were formerly empowered to provide cottage holdings, as to which see note 7.

6 These provisions were the Small Holdings and Allotments Acts 1908 to 1931 (as to which see PARA 488 note 3) as at the applicable time enacted. The provisions of the Small Holdings and Allotments Act 1908 to 1931 applicable to smallholdings before 1 October 1949 (ie the date on which the Agriculture Act 1947 Pt IV (ss 47-67) (which did not apply to cottage holdings (s 66(1) (repealed)) was brought into force by the Agriculture Act 1947 (Commencement) Order 1949, SI 1949/1201) apply to cottage holdings, with the further requirement that the owner or occupier should reside in the dwelling house: Agricultural Land (Utilisation) Act 1931 s 12(1) (as amended: see note 2), which has effect subject to the Agriculture Act 1970 s 60 (see PARA 598): Agricultural Land (Utilisation) Act 1931 s 12(1) (as so amended). Cottage holdings existing on 1 August 1970 continue to be subject to the specified statutory provisions.

7 The Agriculture Act 1970 s 60 refers to a county council, a county borough council or the Greater London Council, although in practice this should be read as a reference to the successor bodies of the councils referred to in the text (see the text and notes 2-3). The successor bodies of the English county and county borough councils are the English county councils, as to which see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. The successor bodies of the Welsh county and county borough councils are the newly constituted Welsh county and county borough councils, as to which see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. The principal successor bodies of the Greater London Council are the London boroughs and the Common Council of the City of London; see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 33, 35 et seq, 51 et seq.

A county council in England may make arrangements with the council of any district in the county for the exercise, as agents for the county council, of any of its powers for the adaptation and management of cottage holdings for the district, and the district council may undertake to pay the whole or any part of the loss, if any, incurred in connection with such cottage holdings: Small Holdings and Allotments Act 1926 s 9 (amended by the Local Government Act 1972 Sch 30; and the Statute Law (Repeals) Act 1993). These arrangements did not authorise the exercise on behalf of a county council of the power of submitting proposals and estimates for the purpose of obtaining contributions: Small Holdings and Allotments Act 1926 s 9 (proviso). Although s 9 does not specifically limit its application to England, since district councils in Wales have been abolished (see the Local Government (Wales) Act 1994 s 20(6), (7) (as originally enacted)) and statutory references thereto replaced with references to county or county borough councils (s 17(1), (2), (4), (5)), there are now no authorities in Wales at the district council level to which the Welsh counties and county boroughs could delegate in pursuance of these powers; note also that although the successor bodies of the Greater London Council (ie, principally, the London boroughs and the Common Council of the City of London) have powers in relation to the management of cottage holdings they cannot enjoy the delegated powers set out in the text.

8 See the Agriculture Act 1970 s 60(1) (amended by the Local Government Act 1972 Sch 30; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 38(3)); and PARA 598.

9 See the First Report of Wise Committee of Inquiry into Statutory Smallholdings (Cmnd 2936) paras 132, 133, 481, 482.

10 See PARAS 593-601.

## UPDATE

### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## **(ii) Provision and Operation of Cottage Holdings**

### **593. Consideration for sale of cottage holdings.**

Where a council sold a cottage holding<sup>1</sup> the consideration had to be a terminable annuity equal to the full fair rent<sup>2</sup> of the holding for 60 years or, at the purchaser's option, a terminable annuity for a less period of an equivalent capital value<sup>3</sup>. The annuity is paid in equal half-yearly instalments, secured by a charge on the holding<sup>4</sup>. The council may postpone payment of all or part of the annuity for up to five years on account of capital expenditure by the purchaser which in the council's opinion increases the holding's value, but must do so on such terms as will, in its opinion, prevent the council from incurring any loss or increased loss<sup>5</sup>.

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592.

2 Questions as to what was a full fair rent or as to the amount of the annuity were to be determined by the council: Small Holdings and Allotments Act 1926 s 5(5). As to the application of the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6.

3 Small Holdings and Allotments Act 1926 s 5(1). The Rentcharges Act 1977 ss 8-10 (see **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 900-902), relating to the redemption of rentcharges, would apply to a terminable annuity under the Small Holdings and Allotments Act 1926 s 5(1) when charged on the holding.

4 Small Holdings and Allotments Act 1926 s 5(2).

5 Small Holdings and Allotments Act 1926 s 5(3).

## **UPDATE**

### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **594. Advances for maintenance of cottage holdings.**

Councils may advance money to owners of cottage holdings<sup>1</sup> provided by them or purchased with their assistance<sup>2</sup> for the purpose of constructing, altering or adapting houses or farm buildings on the holding, and may guarantee advances, including interest, made for those purposes by a building, industrial or provident society to owners who are members of that society<sup>3</sup>. The council must be satisfied that the houses will be in all respects fit for human habitation, and that the houses and buildings will be necessary for the requirements of the cottage holdings<sup>4</sup>. The advance, which must be made after a valuation<sup>5</sup>, must be secured by a mortgage not exceeding 90 per cent of the mortgagor's interest, and must provide for repayment by instalments or by an annuity, or, in the event of non-compliance with conditions, on demand<sup>6</sup>. It may be made by instalments during construction of up to 50 per cent of the value of the work done<sup>7</sup>

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592.

2 Councils could formerly provide assistance towards the purchase of cottage holdings: see the Small Holdings and Allotments Act 1926 s 13(1); and PARA 592 note 5.

3 Small Holdings and Allotments Act 1926 s 14(1) (amended by the Agricultural Land (Utilisation) Act 1931 Sch 2). As to the application of the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6. The making of advances and the fulfilling of guarantees (except of interest) are purposes for which the council may borrow: Small Holdings and Allotments Act 1926 s 14(4) (amended by the Local Government Act 1933 Sch 11 Pt IV; and SI 1970/211). Note that the exercise of a council's powers to determine the period within which any money borrowed by the council is to be repaid is subject to the consent of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(6). As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Small Holdings and Allotments Act 1926 s 14(2).

5 Small Holdings and Allotments Act 1926 s 14(3)(c).

6 Small Holdings and Allotments Act 1926 s 14(3)(a).

7 Small Holdings and Allotments Act 1926 s 14(3)(b).

#### **UPDATE**

#### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 595. Conditions affecting cottage holdings sold by councils.

Land sold by a council for cottage holdings<sup>1</sup> was required to be sold, except where the relevant minister<sup>2</sup> otherwise directed, subject to a reservation of all minerals vested in the council<sup>3</sup>. Any cottage holding so sold was required to be held for a term of 40 years from the date of the sale and for so long thereafter as the holding remained charged with the terminable annuity, and had to be so held subject to the following conditions<sup>4</sup>:

- 270 (1) that periodical payments under the annuity be duly made<sup>5</sup>;
- 271 (2) that the holding be not divided<sup>6</sup>, sold, assigned, let or sublet without the council's consent<sup>7</sup>;
- 272 (3) that the holding be cultivated by the owner or occupier in accordance with the rules of good husbandry<sup>8</sup> and used for the purpose of agriculture only<sup>9</sup>;
- 273 (4) that not more than one dwelling house be erected on the holding<sup>10</sup> and the owner or occupier reside permanently in it<sup>11</sup>;
- 274 (5) that any dwelling house erected on the holding comply with council requirements as to health and overcrowding<sup>12</sup>;
- 275 (6) that any dwelling house or other building on the holding be kept in repair and insured against fire, with premium receipts to be produced to the council when required<sup>13</sup>; and
- 276 (7) that no dwelling house or building on the holding be used for the sale of intoxicating liquors<sup>14</sup>.

The council could relax or dispense with any of these conditions<sup>15</sup>. If any condition was broken the council could, after giving an opportunity of remedying the breach, take possession or order the sale of the holding without taking possession<sup>16</sup>.

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592.

2 As to the various transfers of ministerial powers relating to cottage holdings and agricultural land generally see PARA 643.

3 Land Settlement (Facilities) Act 1919 s 11(1) (repealed). As to the application of the Land Settlement (Facilities) Act 1919 and the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6.

4 Small Holdings and Allotments Act 1926 s 6(1).

5 Small Holdings and Allotments Act 1926 s 6(1)(a).

6 If the holding, while subject to these conditions, would on the owner's decease become subdivided by reason of any devise, bequest, intestacy or otherwise, the council could require it to be sold within 12 months of the decease to some one person, and if default was made in so selling it, could either take possession, or order a sale without taking possession: Small Holdings and Allotments Act 1926 s 6(3).

7 Small Holdings and Allotments Act 1926 s 6(1)(b).

8 ie as defined in the Agricultural Holdings Act 1923 s 57 (repealed); see now the Agriculture Act 1947 s 11; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 903.

9 Small Holdings and Allotments Act 1926 s 6(1)(c).

10 Unless, in the opinion of the council, additional accommodation is required for the proper cultivation of the holding: Small Holdings and Allotments Act 1926 s 6(1)(d).



- 11 Agricultural Land (Utilisation) Act 1931 s 12(1)(a).
- 12 Small Holdings and Allotments Act 1926 s 6(1)(e).
- 13 Small Holdings and Allotments Act 1926 s 6(1)(f).
- 14 Small Holdings and Allotments Act 1926 s 6(1)(g).
- 15 Small Holdings and Allotments Act 1926 s 6(1) proviso. Where a contribution is payable by the minister he could consent to any relaxation or dispensation and, in giving consent, could impose terms as to the consideration to be charged and its application in satisfaction of his contributions: s 6(1) proviso.
- 16 Small Holdings and Allotments Act 1926 s 6(2). As to sales without taking possession see PARA 600.

## **UPDATE**

### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (ii) Provision and Operation of Cottage Holdings/596. Assistance to cottage holdings.

### **596. Assistance to cottage holdings.**

Councils providing cottage holdings<sup>1</sup> have all the powers of promoting and assisting co-operative associations that they formerly possessed in respect of smallholdings<sup>2</sup>.

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592.

2 See the Agricultural Land (Utilisation) Act 1931 s 12(1) (amended by the Agriculture Act 1970 Sch 4). As to these powers (expressed as exercised in relation to allotments) see the Small Holdings and Allotments Act 1908 s 49; and PARA 657.

## **UPDATE**

### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (iii) Subsequent Transactions involving Cottage Holdings Land/597. Letting of cottage holdings land.

### **(iii) Subsequent Transactions involving Cottage Holdings Land**

#### **597. Letting of cottage holdings land.**

Because a cottage holding let by a council<sup>1</sup> is generally held subject to the same conditions under which it would be held if it were sold<sup>2</sup>, and because these conditions are consistent only with the use of the land as a cottage holding, land used for cottage holdings cannot be let for any purpose, although a council may appropriate the land for some purpose other than cottage holdings<sup>3</sup>, and then let the land.

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592. No land could be let as a cottage holding by a letting effected by a council after 1 August 1970, whether the land was previously so let or not (although land let by a council as a cottage holding before that date continues to be so let): Agriculture Act 1970 s 60(1)(a), (b) (as originally enacted).

2 Small Holdings and Allotments Act 1926 s 6(4). As to the application of the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6. As to the conditions of letting see PARA 595.

3 See the Local Government Act 1972 ss 122, 126; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 518.

#### **UPDATE**

#### **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (iii) Subsequent Transactions involving Cottage Holdings Land/598. Sale of cottage holding land.

#### **598. Sale of cottage holding land.**

Although it has not been permitted since 1 August 1970 for land to be sold by a council as a cottage holding<sup>1</sup> this does not mean that cottage holdings land<sup>2</sup> cannot be sold; any such sale must, however, be for some purpose other than the use of the land for cottage holdings.

Where any cottage holdings land is sold, exchanged or appropriated for other purposes by a council<sup>3</sup> to which contributions are payable in respect of cottage holdings land<sup>4</sup>, the council must forthwith after completion of the sale, exchange or appropriation furnish particulars thereof to the Secretary of State or the Welsh Ministers<sup>5</sup> in a prescribed form of statement<sup>6</sup> signed by the treasurer, accountant or other authorised council officer<sup>7</sup>. The Secretary of State or the Welsh Ministers may adjust, in such manner as he or they think fit having regard to any such particulars, the amount or aggregate amount of any contributions payable to the council in relation to cottage holdings land in a case where the land sold, exchanged or appropriated is land which has been, or formed part of, land in respect of which contributions have been made or undertaken to be made<sup>8</sup> in connection with proposals and estimates relating to that land<sup>9</sup>. The council must also furnish any other particulars which the Secretary of State or the Welsh Ministers may require at any time for the purpose of satisfying him or it that contributions payable to it should continue to be paid<sup>10</sup>.

If a council does not comply with the statutory requirements<sup>11</sup> in relation to land held by it for the purpose of cottage holdings the Secretary of State or the Welsh Ministers may determine that contributions which would otherwise be payable to him or them should be withheld or reduced, whereupon the Secretary of State or the Welsh Ministers must withhold or reduce them accordingly<sup>12</sup>. Any person authorised by the Secretary of State or the Welsh Ministers may at all reasonable times inspect the council's books and other documents relating to transactions in connection with which any contributions are payable to the council<sup>13</sup>.

1 See PARA 592. As to the meaning of 'cottage holding' see PARA 591.

2 'Cottage holdings land' means land held by a county or county borough council or the Greater London Council immediately before 1 August 1970 for the purposes of cottage holdings: Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 2(2) (amended by SI 1974/396); Agriculture Act 1970 (Commencement No 2) Order 1970, SI 1970/1048. The Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, are applied in relation to cottage holdings by the Agriculture Act 1970 s 60(2)-(4) (s 60(2) amended by SI 1974/396).

3 As to this power see the Local Government Act 1972 ss 122, 126; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 518.

4 The Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, regs 4-8 do not apply to a council to which no contributions are payable in respect of cottage holdings land, and cease to apply to it when contributions cease to be payable to it: reg 9.

5 As to the Secretary of State and the Welsh Ministers see PARA 643.

6 See the Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 5, Sch 2; and see notes 2, 4.

7 Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 5(1); and see note 4.

8 Ie under the Small Holdings and Allotments Act 1926 s 2, as applied to cottage holdings by s 12 (repealed) or by the Agricultural Land (Utilisation) Act 1931 s 12: Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, regs 3(2), 5(2)(b). See also note 4.

9 Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 5(1); and see note 4.

10 Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 6; and see note 4.

11 Ie the requirements of the Agriculture Act 1970 Pt III (ss 37-65).

12 Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 7; and see note 4.

13 Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051, reg 8; and see note 4.

## UPDATE

## **592-598 Cottage holdings before and after 1970 ... Sale of cottage holding land**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (iii) Subsequent Transactions involving Cottage Holdings Land/599. Council taking possession of a cottage holding.

### **599. Council taking possession of a cottage holding.**

Where a council<sup>1</sup>, either on breach of any condition<sup>2</sup> or on the decease of an owner<sup>3</sup>, takes possession of a cottage holding, it vests in the council, which may either retain it under the council's own management or sell or otherwise dispose of it<sup>4</sup>. However, where it takes possession, the council must pay the owner either an agreed sum<sup>5</sup> or the value<sup>6</sup> of the interest in the holding less the redemption value of the annuity<sup>7</sup> and any arrears of annuity then due<sup>8</sup>. The costs incidental to taking possession or disposing of the holding<sup>9</sup> are deducted from the sum payable to the owners<sup>10</sup>. If the value of the holding, ascertained as mentioned above, proves to be less than the redemption value together with any arrears of the annuity, the council may recover the deficiency summarily from the owner as a civil debt<sup>11</sup>.

1 As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592. As to the meaning of 'cottage holding' see PARA 591.

2 See PARA 595.

3 See PARA 595 note 6.

4 Small Holdings and Allotments Act 1926 s 7(1). As to the application of the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6. As to the procedure on sale without taking possession see PARA 600; as to sales generally see PARA 598.

5 Small Holdings and Allotments Act 1926 s 7(2)(a).

6 In the absence of sale and in default of agreement the value must be settled by an arbitrator under the Agricultural Holdings Act 1986 (see PARA 469 et seq): Small Holdings and Allotments Act 1926 s 7(2)(b).

7 The amount at which the annuity may be redeemed under the Law of Property Act 1925 s 191 (repealed: see now the Rentcharges Act 1977 ss 8-10; and **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 900-902).

8 Small Holdings and Allotments Act 1926 s 7(2)(b).

9 These include the costs of any arbitration: see note 6.

10 Small Holdings and Allotments Act 1926 s 7(4). The sum payable carries interest at 5% per annum from the date of taking possession if not paid within three months after that date: Small Holdings and Allotments Act 1926 s 7(3).

11 Small Holdings and Allotments Act 1926 s 7(6). As to the recovery of civil debts see the Magistrates' Courts Act 1980 s 58; and **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (iii) Subsequent Transactions involving Cottage Holdings Land/600. Council ordering sale without taking possession of a cottage holding.

#### **600. Council ordering sale without taking possession of a cottage holding.**

Where a council orders the sale of a cottage holding without taking possession<sup>1</sup> it must cause the holding to be put up for auction<sup>2</sup>. The sale by auction may be made either subject to the charge in respect of the terminable annuity<sup>3</sup>, or free, wholly or partly, from that charge<sup>4</sup>. In either case, the purchase money to be paid by the purchaser on the auction is subject to the same provisions as purchase money payable on the first sale of a holding<sup>5</sup>. The council must retain out of the proceeds of sale a sum equal to the redemption value of any annuity charged on the holding, unless the holding is sold subject to the terminable annuity, together with any arrears of the annuity and all costs, the balance being paid to the owner<sup>6</sup>. If, however, the council is unable to sell the holding for such sum as will reimburse it for the aforementioned amounts, it may take possession without being liable to pay the owner anything, and with the right to recover summarily from him, as a civil debt, the amount of the deficiency<sup>7</sup>.

1 As to the meaning of 'cottage holding' see PARA 591. As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592. The council cannot sell the land as a cottage holding and it must therefore be sold for other purposes: see PARA 598.

2 Small Holdings and Allotments Act 1926 s 8(1). As to the application of the Small Holdings and Allotments Act 1926 to cottage holdings see PARA 592 note 6.

3 As to the terminable annuity see PARA 593.

4 Small Holdings and Allotments Act 1926 s 8(3).

5 Small Holdings and Allotments Act 1926 s 8(3). As to the provisions referred to see PARA 593.

6 Small Holdings and Allotments Act 1926 s 8(1).

7 Small Holdings and Allotments Act 1926 s 8(2). As to the recovery of civil debts see the Magistrates' Courts Act 1980 s 58; and **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(5) COTTAGE HOLDINGS/ (iii) Subsequent Transactions involving Cottage Holdings Land/601. Compensation for improvements and right of removal of fixtures in case of cottage holdings.

#### **601. Compensation for improvements and right of removal of fixtures in case of cottage holdings.**

A tenant to whom a cottage holding<sup>1</sup> has been let<sup>2</sup> has against the council<sup>3</sup> the same right to compensation for specified improvements<sup>4</sup> as he would have had if the holding had been a market garden<sup>5</sup>. He is not, however, entitled to compensation for improvements executed contrary to an express written prohibition by the council<sup>6</sup>. If the tenant feels aggrieved by such a prohibition he may appeal to the Secretary of State or the Welsh Ministers<sup>7</sup>, who may confirm, vary or annul the prohibition: in this respect the Secretary of State's or the Welsh Ministers' decision is final<sup>8</sup>.

A tenant may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and may remove any toolshed, greenhouse, fowlhouse or pigsty built or acquired by him for which he has no such claim<sup>9</sup>.

If the cottage holding is an agricultural holding<sup>10</sup> he may claim compensation for improvements and remove buildings and fixtures in accordance with the Agricultural Holdings Act 1986<sup>11</sup>.

1 As to the meaning of 'cottage holding' see PARA 591.

2 Land can no longer be let as a cottage holding, although existing lettings may continue in effect: see PARAS 592, 597.

3 As to the councils who could provide cottage holdings, and the successor bodies required to manage such holdings as continue to exist, see PARA 592.

4 I.e. the planting of standard or other fruit trees permanently set out, fruit bushes permanently set out, strawberry plants, and asparagus, rhubarb and other vegetable crops which continue productive for two or more years: Small Holdings and Allotments Act 1908 s 47, Sch 2 Pt I. As to the application of the Small Holdings and Allotments Act 1908, the Small Holdings and Allotments Act 1926 and the Agricultural Land (Utilisation) Act 1931 to cottage holdings see PARA 592 note 6. It should be noted that the amendments made to the cited provisions by the Agricultural Tenancies Act 1995, under which farm business tenancies are created, are not relevant to cottage holdings: new cottage holdings could not be granted after 1970, whereas farm business tenancies could not be created before 1995.

5 Small Holdings and Allotments Act 1908 s 47(1). For a market garden tenant's right to compensation for improvements see PARAS 464-468.

6 Small Holdings and Allotments Act 1908 s 47(1) proviso (amended by the Local Government, Planning and Land Act 1980 Sch 5 para 1(c)).

7 As to the Secretary of State and the Welsh Ministers see PARA 643.

8 Agricultural Land (Utilisation) Act 1931 s 12(1A) (added by the Local Government, Planning and Land Act 1980 Sch 33 para 2).

9 Small Holdings and Allotments Act 1908 s 47(4).

10 I.e. within the meaning of the Agricultural Holdings Act 1986 (as to which see PARA 323).

11 See PARAS 336, 464-468.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(6) BANKRUPTCY OF TENANT/602. Continued farming by trustee in bankruptcy of agricultural tenant.

## **(6) BANKRUPTCY OF TENANT**

### **602. Continued farming by trustee in bankruptcy of agricultural tenant.**

Where the trustee in bankruptcy<sup>1</sup> of a yearly tenant of an agricultural holding carries on the farming for the benefit of the creditors, and at the determination of the tenancy claims compensation from the landlord due under the Agricultural Holdings Act 1986, or under custom or agreement, the landlord may not set off against the amount of such compensation rent which was due from the tenant before the bankruptcy<sup>2</sup>. However, if a custom of the country is proved for the landlord to deduct from the tenant's claims for compensation all arrears of rent, the custom will prevail notwithstanding the bankruptcy of the tenant<sup>3</sup>.

Until a day to be appointed<sup>4</sup> the trustee of any bankrupt, or any assignee under any bill of sale, or any purchaser of the goods, stock or crop of any person engaged in husbandry on any land let as an agricultural holding, may not take, use or dispose of any hay, straw, grass or roots, or any other produce of such land, or any manure, etc, thereon, in any other manner and for any other purpose than such bankrupt or other person engaging in husbandry ought to have done if no such bankruptcy had occurred or no such assignment or sale had been made<sup>5</sup>. This provision applies to a trustee in bankruptcy notwithstanding the disclaimer of the tenancy agreement by him<sup>6</sup>. It does not extend to a purchaser from the landlord of goods distrained by him<sup>7</sup>.

1 See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 316 et seq. As to the disentitlement of a tenant of an agricultural holding to serve a counter-notice on the landlord after receiving a notice to quit given on the grounds of the tenant's bankruptcy or compounding with his creditors see PARA 382. As to the right of a tenant of a holding let or treated as a market garden to compensation for improvement under the Evesham custom where notice to quit is given on those grounds see PARA 466.

2 *Alloway v Steere* (1882) 10 QBD 22, DC.

3 *Re Wilson, ex p Lord Hastings* (1893) 62 LJQB 628.

4 The Sale of Farming Stock Act 1816 s 11 (see the text and note 5) is repealed, as from a day to be appointed, by the Tribunals, Courts and Enforcement Act 2007 Sch 13 para 5, Sch 23 Pt 3. At the date at which this volume states the law no such day had been appointed.

5 Sale of Farming Stock Act 1816 s 11. See also *Lord Eldon v Hedley Bros* [1935] 2 KB 1, CA.

6 *Lybbe v Hart* (1885) 29 Ch D 8, CA. As to disclaimer see PARA 604.

7 *Hawkins v Walrond* (1876) 1 CPD 280.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(6) BANKRUPTCY OF TENANT/603. Forfeiture on tenant's bankruptcy: effect on covenant to consume fodder.

### **603. Forfeiture on tenant's bankruptcy: effect on covenant to consume fodder.**

Where there is an absolute covenant by a tenant for a term of years not to sell or remove the hay and straw, but to consume the same on the holding, and also to leave on the holding unconsumed all fodder grown in the last year of the term, on being paid for the same by valuation, then if the tenancy is forfeited on the bankruptcy of the tenant for breach of condition, and the landlord re-enters and forfeits the tenancy, the landlord is not bound by the stipulation to pay for the unconsumed hay and straw<sup>1</sup>.

1 *Silcock v Farmer* (1882) 46 LT 404, CA; but see *Re Morrish, ex p Hart Dyke* (1882) 22 Ch D 410, CA.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(6) BANKRUPTCY OF TENANT/604. Disclaimer by tenant's trustee in bankruptcy.

### **604. Disclaimer by tenant's trustee in bankruptcy.**

The trustee in bankruptcy of a tenant has power with the leave of the court, and in certain cases without leave, to disclaim the tenancy<sup>1</sup>. If a trustee in bankruptcy of a tenant sells hay,

etc, off the holding without returning manure as required by the custom of the country or by the terms of the contract of tenancy, and then disclaims the tenancy, he becomes personally liable to the landlord for his wrongful act<sup>2</sup>.

In the absence of any order of the court dealing with such matter, when the trustee in bankruptcy of a tenant disclaims the tenancy he is not entitled to be paid for fallows, etc<sup>3</sup>, or entitled to the benefit of any of the provisions in the tenancy which were to come into effect upon the expiration or sooner determination of the tenancy<sup>4</sup>, nor, in such cases, may he claim compensation for unexhausted improvements under custom or statute<sup>5</sup>.

If a trustee in bankruptcy of a tenant disclaims the tenancy, the court may make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy as the court thinks just<sup>6</sup>.

1 See the Insolvency Act 1986 s 315; the Insolvency Rules 1986, SI 1986/1925, r 6.178; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 472 et seq.

2 *Schofield v Hincks* (1888) 58 LJQB 147.

3 See PARA 354.

4 *Re Morrish, ex p Hart Dyke* (1882) 22 Ch D 410, CA.

5 *Schofield v Hincks* (1888) 58 LJQB 147; *Re Wadsley, Bettinson's Representative v Trustee* (1925) 94 LJ Ch 215.

6 See the Insolvency Act 1986 s 317(2) (which provides for the court to make the orders where the court gives a direction that the disclaimer is to take effect); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 481.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/1. TENANCIES OF AGRICULTURAL LAND/(6) BANKRUPTCY OF TENANT/605. Concept of reputed ownership abolished.

## **605. Concept of reputed ownership abolished.**

The doctrine of reputed ownership has been abolished by the omission of the words 'goods in the reputed ownership of the bankrupt'<sup>1</sup> from the definition of the bankrupt's estate in the Insolvency Act 1986<sup>2</sup>.

1 See eg the Bankruptcy Act 1914 s 38(c) (repealed).

2 See the Insolvency Act 1986 s 283; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) para 216.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND/(1) TENANCIES GOVERNED BY THE AGRICULTURAL TENANCIES ACT 1995/606. Compensation for displacement payable by acquiring authority.

## **2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND**

### **(1) TENANCIES GOVERNED BY THE**



## 606. Compensation for displacement payable by acquiring authority.

Where land<sup>1</sup> is used for the purposes of agriculture and is so used by way of a trade or business, or is not so used but is comprised in a farm business tenancy<sup>2</sup> and used for the purposes of a trade or business, and the person carrying on the trade or business is displaced from the land because an interest in it is compulsorily acquired or sold by agreement to an authority possessing compulsory purchase powers<sup>3</sup>, the acquiring authority<sup>4</sup> may pay to that person such reasonable allowance as it thinks fit towards his removal expenses and the loss which, in its opinion<sup>5</sup>, he will sustain by reason of the resulting disturbance of his trade or business<sup>6</sup>.

1 As to the meaning of 'land' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 516; definition applied by the Agriculture (Miscellaneous Provisions) Act 1963 s 22(4).

2 As to the meaning of 'farm business tenancy' see PARA 302.

3 As to the meaning of 'authority possessing compulsory purchase powers' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 763; definition applied by the Agriculture (Miscellaneous Provisions) Act 1963 s 22(4).

4 As to the meaning of 'acquiring authority' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 622; definition applied by the Agriculture (Miscellaneous Provisions) Act 1963 s 22(5).

5 In estimating the loss the authority must have regard to the period for which the land might reasonably have been expected to be available for the purpose of the trade or business, and to the availability of other land suitable for that purpose: Agriculture (Miscellaneous Provisions) Act 1963 s 22(2).

6 Agriculture (Miscellaneous Provisions) Act 1963 s 22(1) (amended by the Agricultural Tenancies Act 1995 Schedule para 21(2)). These provisions have effect without prejudice to the operation of any other enactment authorising the making of payments to persons displaced from any land: Agriculture (Miscellaneous Provisions) Act 1963 s 22(3).

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. **COMPULSORY ACQUISITION OF AGRICULTURAL LAND/(2) TENANCIES GOVERNED BY THE AGRICULTURAL HOLDINGS ACT 1986/607.** Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986.

## (2) TENANCIES GOVERNED BY THE

### 607. Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986.

Where in pursuance of any enactment providing for the acquiring or taking of possession<sup>1</sup> of land compulsorily an acquiring authority<sup>2</sup> acquires from the tenant<sup>3</sup> the interest in an agricultural holding<sup>4</sup> or any part of an agricultural holding governed by the Agricultural Holdings Act 1986<sup>5</sup>, or takes possession of the holding or any part of it, additional compensation<sup>6</sup> is payable, subject to specified limitations<sup>7</sup>, as if the acquiring authority were the landlord<sup>8</sup> and compensation for disturbance had become payable<sup>9</sup>, subject to supplementary provisions relating to assessment and payment of compensation<sup>10</sup>.

Compensation payable to a tenant under the Land Compensation Act 1973 is to be assessed without regard to the right of the landlord to give notice to quit or any notice to quit already served by the landlord on the ground of the acquiring authority's intention to use the land<sup>11</sup>. It

is provided that in any event compensation must be reduced by any amount received as additional payment on compulsory acquisition<sup>12</sup>, but must not be less than the sums to which the tenant would be so entitled<sup>13</sup>. If the acquiring authority serves notice to treat or notice of entry on part of the holding there is power for the tenant to serve a counter-notice enlarging the acquiring authority's notice<sup>14</sup>.

Where a tenant receives notice to quit from his landlord whose interest is being compulsorily acquired and the notice is given on the ground that the land is no longer required for agricultural use, the tenant may elect to claim compensation from the acquiring authority as if no notice to quit had been served (instead of claiming against the landlord)<sup>15</sup>.

Occupier's loss payment may also be available<sup>16</sup>.

1 'Possession' means actual possession: Agriculture (Miscellaneous Provisions) Act 1968 s 17(1).

2 An 'acquiring authority' is any person authorised by any enactment to acquire or take possession of land compulsorily: Agriculture (Miscellaneous Provisions) Act 1968 ss 12(1), 17(1).

3 As to the meaning of 'tenant' see PARA 323 note 5. For these purposes a tenant of an agricultural holding is treated as not being a tenant of it in so far as, immediately before the acquiring of the interest or the taking of possession, he was neither in possession nor entitled to take possession of any land comprised in the holding; and, in determining whether a tenant was so entitled, any agreement under the Agricultural Holdings Act 1986 s 2(2) (see PARA 327) which relates to the land and has not taken effect as an agreement for a tenancy from year to year must be disregarded: Agriculture (Miscellaneous Provisions) Act 1968 s 13(1) (amended by the Agricultural Holdings Act 1986 Sch 14 para 45). Accordingly, neither a tenant who has sub-let nor a tenant under a grazing agreement or a consent tenancy pursuant to the Agricultural Holdings Act 1986 s 2 (see PARA 327) would be so entitled.

4 As to the meaning of 'agricultural holding' see PARA 323.

5 No sum is payable by virtue of these provisions in respect of any land comprised in a farm business tenancy under the Agricultural Tenancies Act 1995 (see PARA 301 et seq): Agriculture (Miscellaneous Provisions) Act 1968 s 12(1A) (added by the Agricultural Tenancies Act 1995 Schedule para 23). As to compensation for displacement in respect of a farm business tenancy see PARA 606.

6 I.e. compensation under the Agricultural Holdings Act 1986 s 60(2)(b), (4) (see PARA 448).

7 See the text and notes 11-16; and PARA 608.

8 As to the meaning of 'landlord' see PARA 323 note 7.

9 Agriculture (Miscellaneous Provisions) Act 1968 s 12(1) (amended by the Agricultural Holdings Act 1986 Sch 14 para 44).

10 See the Agriculture (Miscellaneous Provisions) Act 1968 Sch 3 (amended by the Agricultural Holdings Act 1986 Sch 13 para 3, Sch 14 para 48). Disputes as to compensation are to be referred to and are determinable by the Lands Tribunal: Agriculture (Miscellaneous Provisions) Act 1968 Sch 3 para 1. As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq. Where the sum to be paid as additional compensation by the acquiring authority could otherwise fall to be ascertained by reference to a rent at a rate which was not determined by arbitration and the authority considers it to be unduly high, it may apply to the Lands Tribunal to have the rent considered: Sch 3 para 2 (as so amended). Where, on such an application, the tribunal is satisfied that the rent is not substantially higher than the rent which would be determined for the holding on an arbitration under the Agricultural Holdings Act 1986 s 12 (see PARA 338) at the date of the application or, if it is substantially higher, it was not fixed by the parties to the tenancy contract with a view to increasing any compensation or additional sum payable on compulsory acquisition or the taking of possession of any land included in the holding, it must dismiss the application: Agriculture (Miscellaneous Provisions) Act 1968 Sch 3 para 3 (as so amended). The provisions of the Land Compensation Act 1961 Pt I (ss 1-4) and s 32, the Compulsory Purchase Act 1965 ss 6, 9, 11, 12, 20(4), (5), 22(1)-(3), (5), 26, Sch 1 paras 6-8, 10, Schs 2, 3, and of the Lands Clauses Acts or other enactments corresponding to those provisions of the Compulsory Purchase Act 1965 apply with necessary modifications and adaptations to the acquisition of the interest or the taking of possession under these provisions: Agriculture (Miscellaneous Provisions) Act 1968 Sch 3 paras 4, 5. See **COMPULSORY ACQUISITION OF LAND**.

11 See the Land Compensation Act 1973 s 48(3); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 807. This effectively reverses the decision in *Rugby Joint Water Board v Footitt* [1973] AC 202, [1972] 1 All ER

1057, HL, a case in which it was held that, where a landlord was entitled to serve (under what is now the Agricultural Holdings Act 1986 Sch 3, Case B (see PARA 378)) notice to quit in respect of land acquired either by the landlord or by the authority with compulsory purchase powers, the compensation was to be assessed on the basis that the tenancy was unprotected and the landlord was entitled to obtain vacant possession on the expiration of the notice to quit.

12 See under the Agriculture (Miscellaneous Provisions) Act 1968 s 12.

13 See the Land Compensation Act 1973 s 48(5), (6); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 807.

14 See the Land Compensation Act 1973 ss 53, 55; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 622, 703.

15 See the Land Compensation Act 1973 s 59; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 824. This covers the position where the tenant has received notice to quit from a landlord whose interest is being compulsorily acquired and the notice is given on the ground that the land is required for non-agricultural use. Whereas before the enactment of s 59 the tenant could only proceed against the landlord for compensation under the Agricultural Holdings Act 1948 and the Agriculture (Miscellaneous Provisions) Act 1968, it is now open to him to elect to claim compensation from the acquiring authority as if no notice to quit had been served. If such an election is made, no claim can be made against the landlord.

16 See the Land Compensation Act 1973 ss 33A-33K; PARA 610; and **COMPULSORY ACQUISITION OF LAND**.

## UPDATE

### **607-610 Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986 ... Entitlement to payment by acquiring authority of occupier's loss payment**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND/(2) TENANCIES GOVERNED BY THE AGRICULTURAL HOLDINGS ACT 1986/608. Exceptions where no additional payment is made in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986.

### **608. Exceptions where no additional payment is made in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986.**

The provisions for additional payments in consequence of the compulsory acquisition or taking of possession of agricultural holdings governed by the Agricultural Holdings Act 1986<sup>1</sup> do not apply in respect of an agricultural holding<sup>2</sup> held on a tenancy for a term of two years or upwards<sup>3</sup>. By way of exception, these provisions do apply in a case where the amount of compensation payable to the tenant<sup>4</sup> of the holding by the acquiring authority<sup>5</sup> in consequence of the acquisition or taking of possession<sup>6</sup> in question is exceeded by the aggregate of the amounts which, if the tenancy had been from year to year, would have been so payable by way of compensation and by virtue of those provisions<sup>7</sup>. In any such case the sum payable by virtue of those provisions in consequence of the acquisition or taking of possession in question is, subject to a contrary determination by the Lands Tribunal<sup>8</sup>, to be an amount equal to the excess<sup>9</sup>.

No sum is payable<sup>10</sup> to the tenant of an agricultural holding in consequence of an acquiring of an interest or taking of possession unless the date on which the acquisition or taking of possession occurs is later than 3 July 1968<sup>11</sup> and:

- 277 (1) in the case of such an acquisition, unless the date on which notice to treat in respect of the interest to be acquired is served or treated as served on the tenant by the acquiring authority after the initial date<sup>12</sup>; and
- 278 (2) where in the case of such a taking of possession prior notice of the taking of possession is by virtue of any enactment required to be served on the tenant by the acquiring authority, unless the date on which the notice is so served is after the initial date<sup>13</sup>.

In addition, the compensation provisions<sup>14</sup> do not apply where the acquiring authority requires the land comprised in the agricultural holding or part in question for the purposes of agricultural research or experiment or of demonstrating agricultural methods or for the purposes of the enactments relating to smallholdings<sup>15</sup>; however, where an acquiring authority exercises in relation to any land any power to acquire or take possession of land compulsorily which is conferred on the authority for certain purposes<sup>16</sup>, the authority is deemed not to require the land for any of the purposes mentioned above<sup>17</sup>.

If a person is entitled in respect of the same interest in land to a payment both by virtue of the compensation provisions<sup>18</sup> and under the statutory provisions concerned with additional loss payments for agricultural land<sup>19</sup>, only one payment may be made<sup>20</sup>.

1    Ie the provisions of the Agriculture (Miscellaneous Provisions) Act 1968 s 12(1) (see PARA 607). No sum is payable by virtue of those provisions in respect of any land comprised in a farm business tenancy under the Agricultural Tenancies Act 1995: see PARA 607 note 5.

2    As to the meaning of 'agricultural holding' see PARA 323.

3    Agriculture (Miscellaneous Provisions) Act 1968 s 12(2).

4    As to the meaning of 'tenant' see PARA 323 note 5.

5    As to the meaning of 'acquiring authority' see PARA 607 note 2.

6    As to the meaning of 'possession' see PARA 607 note 1.

7    Agriculture (Miscellaneous Provisions) Act 1968 s 12(2).

8    Ie a determination under the Agriculture (Miscellaneous Provisions) Act 1968 Sch 3 (see PARA 607). As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq.

9    Agriculture (Miscellaneous Provisions) Act 1968 s 12(2).

10   Ie by virtue of the Agriculture (Miscellaneous Provisions) Act 1968 s 12(1) (see PARA 607).

11   Ie the date on which the Agriculture (Miscellaneous Provisions) Act 1968 was passed (ie received Royal Assent) and brought into force.

12   Agriculture (Miscellaneous Provisions) Act 1968 s 12(3)(a). The 'initial date' is 1 November 1967: s 17(1).

13   Agriculture (Miscellaneous Provisions) Act 1968 s 12(3)(b).

14   See note 1.

15   As to the enactments relating to smallholdings see PARAS 488-509.

16   Ie conferred by virtue of the Town and Country Planning Act 1990 s 226 or s 230 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 934-935, 938) or the New Towns Act 1981 s 10 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1333, 1335, 1337).

17 Agriculture (Miscellaneous Provisions) Act 1968 s 13(2) (amended by the New Towns Act 1981 Sch 12 para 4; and the Planning (Consequential Provisions) Act 1990 Sch 2 para 19).

18 See note 1.

19 Ie the Land Compensation Act 1973 s 33B (see **COMPULSORY ACQUISITION OF LAND**).

20 Agriculture (Miscellaneous Provisions) Act 1968 s 12(4) (added by the Planning and Compulsory Purchase Act 2004 Sch 7 para 4). See further the Land Compensation Act 1973 s 33H; PARA 610; and **COMPULSORY ACQUISITION OF LAND**.

## UPDATE

### **607-610 Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986 ... Entitlement to payment by acquiring authority of occupier's loss payment**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND/(2) TENANCIES GOVERNED BY THE AGRICULTURAL HOLDINGS ACT 1986/609. Compensation payable by acquiring authority in respect of agricultural holdings.

### **609. Compensation payable by acquiring authority in respect of agricultural holdings.**

Special rules apply to the assessment of compensation where in pursuance of any enactment providing for the acquisition or taking of possession compulsorily an acquiring authority<sup>1</sup> either acquires the interest of the landlord<sup>2</sup> in an agricultural holding<sup>3</sup> to which the Agricultural Holdings Act 1986 applies, or any part of it<sup>4</sup>, or acquires the interest of the tenant<sup>5</sup> in, or takes possession of, an agricultural holding or any part of it<sup>6</sup>.

In the case of a payment by the acquiring authority to the landlord, in assessing the compensation, there must be disregarded any right of the landlord to serve a notice to quit<sup>7</sup>, and any notice to quit already served by the landlord, which would not be or would not have been effective if:

279 (1) in Case B<sup>8</sup> the reference to the land being required did not include a reference to its being required by an acquiring authority<sup>9</sup>; and

280 (2) the reference in the Agricultural Holdings Act 1986<sup>10</sup> in relation to the landlord's proposal to terminate the tenancy for use other than agriculture, not falling within Case B, did not include a reference to its being used by an acquiring authority<sup>11</sup>.

If the tenant has quitted the holding or any part of it by reason of a notice to quit which is to be so disregarded, it must be assumed that he has not done so<sup>12</sup>.

In the case of a payment by an acquiring authority to a tenant, in assessing the tenant's compensation, there must be disregarded any right of the landlord to serve a notice to quit, and any notice to quit already served by the landlord, which would not be or would not have

been effective if Case B and the related reference<sup>13</sup> were construed as above<sup>14</sup>. The tenant's compensation must be reduced by an amount equal to any payment which the acquiring authority is liable to make to him, in respect of the acquisition or taking of possession in question, under the provisions relating to additional payments<sup>15</sup>. If the tenant's compensation, so calculated, is less than it would have been had these provisions not been enacted, it must be increased to the amount of the deficiency<sup>16</sup>. Further, in assessing the tenant's compensation no account is to be taken of any benefit which might accrue to the tenant by virtue of the additional compensation provisions contained in the Agricultural Holdings Act 1986<sup>17</sup>.

1 As to the meaning of 'acquiring authority' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 622; definition applied by the Land Compensation Act 1973 s 87(1).

2 As to the meaning of 'landlord' see PARA 323 note 7; definition applied by the Land Compensation Act 1973 s 87(1).

3 As to the meaning of 'agricultural holding' see PARA 323; definition applied by the Land Compensation Act 1973 s 87(1) (amended by the Agricultural Holdings Act 1986 Sch 14 para 56).

4 Land Compensation Act 1973 s 48(1)(a) (s 48(1) amended, and s 48(1A) added, by the Agricultural Tenancies Act 1995 Schedule para 24). The provisions of the Land Compensation Act 1973 s 48 do not have effect where the tenancy of the agricultural holding is a tenancy to which, by virtue of the Agricultural Tenancies Act 1995 s 4 (see PARAS 301, 321) the Agricultural Holdings Act 1986 does not apply: Land Compensation Act 1973 s 48(1A) (as so added). As to compensation for displacement in respect of a tenancy governed by the Agricultural Tenancies Act 1995 see PARA 606.

5 As to the meaning of 'tenant' see PARA 323 note 5; definition applied by the Land Compensation Act 1973 s 87(1).

6 Land Compensation Act 1973 s 48(1)(b) (as amended: see note 4).

7 As to the meaning of 'notice to quit' see PARA 328; definition applied by the Land Compensation Act 1973 s 87(1).

8 In Case B in the Agricultural Holdings Act 1986 s 26(2), Sch 3 Pt I (see PARA 378).

9 Land Compensation Act 1973 s 48(2)(a)(i) (s 48(2) amended by the Agricultural Holdings Act 1986 Sch 14 para 53(1), (2)).

10 In the reference in the Agricultural Holdings Act 1986 s 27(3)(f) (see PARA 375). This is one of the matters as to which the agricultural land tribunal must be satisfied before giving consent to a notice to quit.

11 Land Compensation Act 1973 s 48(2)(a)(ii) (as amended: see note 9).

12 Land Compensation Act 1973 s 48(2) (as amended: see note 9).

13 See the text and notes 8, 10.

14 Land Compensation Act 1973 s 48(3) (amended by the Agricultural Holdings Act 1986 Sch 14 para 53(3)).

15 Land Compensation Act 1973 s 48(5). The provisions relating to additional payments on compulsory acquisition or taking of possession are contained in the Agriculture (Miscellaneous Provisions) Act 1968 s 12 (see PARAS 607-608).

16 Land Compensation Act 1973 s 48(6).

17 Land Compensation Act 1973 s 48(6A) (added by the Agricultural Holdings Act 1986 Sch 14 para 53(4)). In this context 'additional compensation provisions' means the Agricultural Holdings Act 1986 s 60(2)(b) (see PARA 448), but not including that provision as applied by the Agriculture (Miscellaneous Provisions) Act 1968 s 12 (see PARAS 607-608): Land Compensation Act 1973 s 48(6A) (as so added).

## UPDATE

**607-610 Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986 ...  
Entitlement to payment by acquiring authority of occupier's loss payment**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2.  
COMPULSORY ACQUISITION OF AGRICULTURAL LAND/ (3) COMPENSATION GENERALLY/610.  
Entitlement to payment by acquiring authority of occupier's loss payment.

### **(3) COMPENSATION GENERALLY**

#### **610. Entitlement to payment by acquiring authority of occupier's loss payment.**

A person who has a qualifying interest in agricultural land<sup>1</sup> which is acquired compulsorily<sup>2</sup> is entitled, provided he has occupied the land for the specified period<sup>3</sup>, to a payment of a specified amount<sup>4</sup> which in respect of an interest in land may not exceed £25,000<sup>5</sup>. Such payment must be made by the acquiring authority<sup>6</sup>. A payment of an equal amount may be made in respect of the acquisition of such an interest by an acquiring authority by agreement<sup>7</sup>. No payment will, however, be made where specified statutory improvement or repair notices or orders relating to hazards have effect or are operative in relation to the land in question<sup>8</sup>, and payments may also be affected by the prior initiation of insolvency proceedings<sup>9</sup> or the death of the entitled person<sup>10</sup>. If a person is entitled in respect of the same interest in agricultural land to a payment both under these provisions<sup>11</sup> and by virtue of statutory entitlement to additional payments in consequence of the compulsory acquisition of an agricultural holding<sup>12</sup>, payment may be made in respect of only one entitlement<sup>13</sup>.

1 Land Compensation Act 1973 s 33B(1)(a), (b) (ss 33A, 33B, 33D, 33H, 33K added by the Planning and Compulsory Purchase Act 2004 ss 106(1), (2), 107(1), (2), 109). An interest in land is a qualifying interest if it is a freehold interest or an interest as tenant and (in either case) it subsists for a period of not less than one year ending with whichever is the earliest of:

- 65 (1) the date on which the acquiring authority takes possession of the land under the Compulsory Purchase Act 1965 s 11 (entry to take possession of land: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 645) (Land Compensation Act 1973 s 33A(4)(a) (as so added));
- 66 (2) the date on which the acquiring authority enters the land if it proceeds under the Compulsory Purchase Act 1965 Sch 3 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 639) (Land Compensation Act 1973 s 33A(4)(b) (as so added));
- 67 (3) the vesting date (within the meaning of the Compulsory Purchase (Vesting Declarations) Act 1981: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 687) if a declaration is made under s 4 (general vesting declaration: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 687) (Land Compensation Act 1973 s 33A(4)(c) (as so added));
- 68 (4) the date on which compensation is agreed between the person and the acquiring authority (s 33A(4)(d) (as so added)); and
- 69 (5) the date on which the amount of compensation is determined by the Lands Tribunal (s 33A(4)(e) (as so added)).

As to the meaning of 'acquiring authority' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 622; definition applied by the Land Compensation Act 1973 s 87(1). As

to the meaning of 'agricultural land' see PARA 324; definition applied by the Land Compensation Act 1973 s 87(1). As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq.

2 Land Compensation Act 1973 s 33B(1)(c) (as added: see note 1). The compulsory acquisition of an interest in land includes acquisition of the interest in consequence of the service of a purchase notice under the Town and Country Planning Act 1990 s 137 (right to require purchase of certain interests: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 966) (Land Compensation Act 1973 s 33A(5)(a) (as so added)) and a notice under the Town and Country Planning Act 1990 s 150 (purchase of blighted land: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 992) (Land Compensation Act 1973 s 33A(5)(b) (as so added)).

3 Land Compensation Act 1973 s 33B(1)(d) (as added: see note 1). The 'specified period' is that specified in s 33A(4) (see note 1).

4 Land Compensation Act 1973 s 33B(2) (as added: see note 1). The payment to which the person is entitled is whichever is the greatest of 2.5% of the value of his interest (s 33B(2)(a) (as so added)), the 'land amount' (s 33B(2)(b) (as so added)), and the 'buildings amount' (s 33B(2)(c) (as so added)). The value of an interest is its value for the purpose of deciding the amount of compensation payable in respect of the acquisition (s 33B(5) (as so added)), subject to the following:

- 70 (1) if an interest consists partly of a dwelling in respect of which the person is entitled to a home loss payment, the value of the interest is the value of the whole interest less the value of so much of the interest as is represented by the dwelling (s 33B(6) (as so added)); and
- 71 (2) if the Land Compensation Act 1961 s 5 r (5) (equivalent reinstatement: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 754) applies for the purpose of assessing the amount of compensation, the value of the interest is nil (Land Compensation Act 1973 s 33B(7) (as so added)).

The 'land amount' is the greater of £300 and:

- 72 (a) where the area of the land does not exceed 100 hectares, £100 per hectare or part thereof (s 33B(8) (as so added)); or
- 73 (b) where the area of the land exceeds 100 hectares, £100 per hectare for the first 100 hectares and £50 per hectare for the next 300 hectares or part thereof: s 33B(8) (s 33B(8) as so added).

The 'buildings amount' is £25 per square metre (or part of a square metre) of the gross floor space (measured externally) of any buildings on the land: s 33B(9), (10) (as so added). As to the meaning of 'dwelling' for these purposes see the Land Compensation Act 1973 s 87(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 802.

The Secretary of State and the Welsh Ministers may by regulations substitute for any amount or percentage figure specified in ss 33A-33K such other amount or percentage figure (as the case may be) as they think fit: s 33K(1), (2) (as so added). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State and the Welsh Ministers see PARA 643.

5 Land Compensation Act 1973 s 33B(3) (as added: see note 1).

6 Land Compensation Act 1973 s 33B(4) (as added: see note 1). A claim for payment must be made in writing to the acquiring authority (s 33E(1), (2) (as so added)), giving such particulars as the authority may reasonably require for the purpose of deciding whether a payment is to be made (s 33E(3)(a) (as so added)) and the amount of any such payment (s 33E(3)(b) (as so added)). For the purposes of the Limitation Act 1980 (see **LIMITATION PERIODS**) a person's right of action to recover such a payment must be taken to have accrued on the date of his displacement from the land: s 33E(4)(b) (as so added). Provision is made for the resolution of disputes as to payment by the Lands Tribunal: see s 33I; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 836.

7 See the Land Compensation Act 1973 s 33J; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 837.

8 See the Land Compensation Act 1973 s 33D; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 832.

9 See the Land Compensation Act 1973 s 33F; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 834.

10 See the Land Compensation Act 1973 s 33G; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 835.

11 Land Compensation Act 1973 s 33H(1)(a) (as added: see note 1).



12 Land Compensation Act 1973 s 33H(1)(b) (as added: see note 1). As to this entitlement see the Agriculture (Miscellaneous Provisions) Act 1968 s 12(1); and PARAS 607-608.

13 Land Compensation Act 1973 s 33H(2) (as added: see note 1). If the person makes a claim under both provisions he must be paid in respect of the entitlement which produces the greater amount: s 33H(3) (as so added).

## **UPDATE**

### **607-610 Additional payments in consequence of compulsory acquisition of agricultural holdings governed by the Agricultural Holdings Act 1986 ... Entitlement to payment by acquiring authority of occupier's loss payment**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **610 Entitlement to payment by acquiring authority of occupier's loss payment**

NOTE 1--References to the Lands Tribunal are now to the Upper Tribunal: Land Compensation Act 1973 ss 33A(4)(e), 33I (amended by SI 2009/1307).

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND/ (3) COMPENSATION GENERALLY/611. Notice to treat by acquiring authority in respect of part of agricultural land.

### **611. Notice to treat by acquiring authority in respect of part of agricultural land.**

Where an acquiring authority<sup>1</sup> serves notice to treat in respect of any agricultural land<sup>2</sup> on a person, whether in occupation or not, who has a greater interest in the land than as tenant<sup>3</sup> for a year or from year to year, and that person has such an interest in other agricultural land comprised in the same agricultural unit<sup>4</sup>, that person (the 'claimant') may, within two months beginning on the date of service of the notice to treat, serve a counter-notice<sup>5</sup> on the authority claiming that the other land is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land<sup>6</sup>, as a separate agricultural unit<sup>7</sup>, and requiring the authority to purchase his interest in the whole of the other land<sup>8</sup>. If within two months beginning with the date of service of the counter-notice, the authority does not agree in writing to accept the counter-notice as valid, the claimant or the authority may in the two months after that period refer it to the Lands Tribunal<sup>9</sup>. The Tribunal must determine whether the claim in the counter-notice is justified and declare it to be valid or invalid accordingly<sup>10</sup>. Where the counter-notice is accepted or declared valid, the authority is deemed to be authorised to acquire compulsorily the land to which the claim relates, and to have served a notice to treat in respect thereof on the date of the original notice to treat<sup>11</sup>. A counter-notice may be withdrawn by the claimant at any time before the Tribunal has determined compensation or during the six weeks beginning with the date of such determination<sup>12</sup>. The compensation payable in pursuance of a notice to treat which is deemed to have been served by the authority must be assessed on certain statutory assumptions relating to planning permission<sup>13</sup>.

Where, in consequence of a counter-notice requiring an authority to purchase the whole of a claimant's interest in land<sup>14</sup>, the authority becomes entitled to a lease of any land, but not to the interest of the lessor, the authority must offer to surrender the lease to the lessor on such terms as the authority considers reasonable<sup>15</sup>. If the lessor refuses to accept any sum payable

under these terms, or refuses or fails to make out his title to the authority's satisfaction, the authority may pay into court any sum payable to the lessor<sup>16</sup>. Where an authority which becomes entitled to the lease of any land as described above is a body incorporated by or under any enactment, the corporate powers of the authority include, if they would not otherwise do so, power to farm the land<sup>17</sup>.

1 As to the meaning of 'acquiring authority' see the Land Compensation Act 1961 s 39(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 622; definition applied by the Land Compensation Act 1973 s 87(1).

2 As to the meanings of 'agricultural' and 'agricultural land' see PARA 324; definition applied by the Land Compensation Act 1973 s 87(1).

3 As to the meaning of 'tenant' see PARA 323 note 5; definition applied by the Land Compensation Act 1973 s 87(1).

4 As to the meaning of 'agricultural unit' see PARA 324 note 7; definition applied by the Land Compensation Act 1973 s 87(1).

5 Where a counter-notice is served, the claimant must, within the same period of two months, serve a copy on any other person who has an interest in the land to which the requirement in the counter-notice relates; failure to do so, however, does not invalidate the counter-notice: Land Compensation Act 1973 s 53(2).

6 'Other relevant land' means:

74 (1) land comprised in the same agricultural unit as the land to which the notice to treat relates, being land in which the claimant does not have an interest greater than as tenant for a year or from year to year (Land Compensation Act 1973 s 53(3)(a)); and

75 (2) land comprised in any other agricultural unit occupied by him on the date of service of the notice to treat, being land in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year (s 53(3)(b)).

Where an acquiring authority has served a notice to treat in respect of land in the holding other than that to which the notice relates, or in respect of other relevant land, or such a notice is deemed to have been served by virtue of the Town and Country Planning Act 1990 ss 137-144 (purchase notices: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 966 et seq), then, unless and until the notice to treat is withdrawn, the provisions of the Land Compensation Act 1973 ss 53, 54 have effect as if that land did not form part of the other agricultural land in the holding or did not constitute other relevant land: s 53(4) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 29(9)).

7 Land Compensation Act 1973 s 53(1)(a). This also applies where a notice is deemed to have been served under the Compulsory Purchase (Vesting Declarations) Act 1981 Pt III (ss 7-9) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 689, 693-694): Land Compensation Act 1973 s 53(5) (amended by the Compulsory Purchase (Vesting Declarations) Act 1981 Sch 3; and the Planning (Consequential Provisions) Act 1990 Sch 2 para 29(9)).

8 Land Compensation Act 1973 s 53(1)(b). See note 7.

9 Land Compensation Act 1973 s 54(1). As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq.

10 Land Compensation Act 1973 s 54(1).

11 Land Compensation Act 1973 s 54(2).

12 Land Compensation Act 1973 s 54(3). Where a counter-notice is so withdrawn, any notice to treat deemed to have been served in consequence of the counter-notice is also deemed to have been withdrawn: s 54(3). Without prejudice to that provision, the general power to withdraw a notice to treat conferred by the Land Compensation Act 1961 s 31 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 636) is not exercisable in the case of a notice to treat which is deemed to have been served in consequence of a counter-notice under the Land Compensation Act 1973 s 54: s 54(4).

13 Land Compensation Act 1973 s 54(5). The statutory assumptions referred to in the text are those contained in s 5(2)-(4) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 896).

14 Ie a counter-notice under the Land Compensation Act 1973 ss 53, 54 (see the text and notes 1-13).

15 Land Compensation Act 1973 s 54(6)(a). The question of what terms are reasonable may be referred by the authority or the lessor to the Lands Tribunal, and must be so referred if at the end of three months after the offer of surrender the question has not been resolved; on a reference the lessor will be deemed to have accepted the surrender at the expiration of one month after the date of the determination or on such other date as the Tribunal directs, and to have agreed such terms as the Tribunal has held to be reasonable: s 54(6)(b), (c).

16 Land Compensation Act 1973 s 54(7). The Compulsory Purchase Act 1965 s 9(2), (5) (deposit of compensation in cases of refusal to convey: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 661, 664) applies with the necessary modifications to that sum: Land Compensation Act 1973 s 54(7).

17 Land Compensation Act 1973 s 54(8). As to the 'farming' of land see PARA 324; definition applied by s 87(1).

## UPDATE

### **611 Notice to treat by acquiring authority in respect of part of agricultural land**

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq). Land Compensation Act 1973 s 54(1), (3), (6)(b) amended: SI 2009/1307.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/2. COMPULSORY ACQUISITION OF AGRICULTURAL LAND/ (3) COMPENSATION GENERALLY/612. Compensation where compulsory rights for opencast coal mining acquired.

### **612. Compensation where compulsory rights for opencast coal mining acquired.**

Where the Coal Authority<sup>1</sup> compulsorily acquires temporary rights of occupation and use of agricultural land for the purposes of opencast coal mining by means of a compulsory rights order<sup>2</sup>, the occupier is entitled to receive from the Authority annual compensation based on the annual value of the land, adjusted by reference to expected profit or loss, and also compensation for the costs of removal and in respect of forced sales of property<sup>3</sup>.

On the termination of the occupation by the Authority, the occupier is entitled to compensation by way of payment of the cost of works for restoring the land and compensation for diminution in the value of the holding; there may be additional compensation payable on re-occupation<sup>4</sup>. Where the land subject to the compulsory rights order consists of or includes land which constitutes or forms part of an agricultural holding, provision is made for modifying the right of the tenant to receive compensation from his landlord in respect of long term improvements and the adoption of a special farming system<sup>5</sup>. Compensation is payable by the Authority to a tenant in respect of short term improvements and tenant right matters and in respect of market garden improvements<sup>6</sup>.

1 Formerly the National Coal Board, and then the British Coal Corporation: see the Coal Industry Act 1987 s 1; the Coal Industry Act 1994 s 1; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 50 et seq.

2 I.e a compulsory rights order made under the Opencast Coal Act 1958 Pt I (ss 1-16) (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 422 et seq).

3 See the Opencast Coal Act 1958 ss 17, 18, 27, Sch 3; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 463 et seq.

4 See the Opencast Coal Act 1958 ss 21-23, 23A; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 466 et seq.

5 See the Opencast Coal Act 1958 ss 24, 25, 37, Sch 7 Pt I; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 472-473.

6 See the Opencast Coal Act 1958 ss 26, 28, Sch 4; and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 474, 477. 'Market garden improvements' are the improvements specified in the Agricultural Holdings Act 1986 Sch 10 (see PARA 464 note 16). As to the meaning of 'market garden' see PARA 324 note 4.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/3. USE AND IMPROVEMENT OF LAND/(1) LAND IMPROVEMENT/(i) In general/A. INTRODUCTION/613. Meaning of 'improvement' and controls on making improvements.

### **3. USE AND IMPROVEMENT OF LAND**

#### **(1) LAND IMPROVEMENT**

##### **(i) In general**

#### **A. INTRODUCTION**

##### **613. Meaning of 'improvement' and controls on making improvements.**

There is no precise statutory definition of 'improvement' and statutes using the word interpret it inclusively by listing particular matters to be included in the meaning<sup>1</sup>. It has been judicially decided that 'improvement' in relation to land consists of the execution of works on the land which are something more than ordinary repairs and which, by implication, must give increased value to the land<sup>2</sup>.

In the present context, 'land' is to be taken to mean not only bare land (in some contexts known as 'greenfield sites') but also any buildings, including any dwelling house.

All land, whether vested in absolute or limited owners or in trustees, is subject to planning legislation<sup>3</sup>. Owners desiring to carry out development work, which may include in some instances works of improvement, have to obtain planning permission. In addition to planning controls imposed by public statutes, the land may be subject to restrictive covenants which bind the land in the hands of successive owners and may limit the landowner's right to execute improvements on it<sup>4</sup>. A tenant may by the terms of his lease be subject to additional restrictions on the execution of improvements, and a substantial alteration of premises may be treated as waste<sup>5</sup>. Whereas, on the one hand, a landowner's right to execute improvements on his land may be limited, he may, on the other hand, be obliged by statute to execute works of improvement on his land<sup>6</sup>.

1 See the Improvement of Land Act 1864 s 9; the Limited Owners Residences Act (1870) Amendment Act 1871 s 3; the Settled Land Act 1882 s 30; and PARAS 615 et seq, 620. Works for the supply of sewage to land for agricultural purposes are also deemed 'improvements' (see the Public Health Act 1936 s 33; and **SETTLEMENTS** vol 42 (Reissue) PARA 816). A landowner assessed for public works or improvements is authorised to obtain an absolute charging order on the inheritance of the lands improved: see the Improvement of Land Act 1864 s 57; and PARA 631.

2 *Re Lindsay's Settlement (No 2)* [1941] Ch 119 at 125, [1941] 1 All ER 143.

3 See the Town and Country Planning Act 1990 s 57; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 236-237.

4 As to restrictive covenants see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq.

5 As to liability for waste see **SETTLEMENTS** vol 42 (Reissue) PARA 986. As to the nature of waste generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 431.

6 See PARA 615 text and note 6.

## UPDATE

### 613 Meaning of 'improvement' and controls on making improvements

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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### 614. Limited owners: powers to make improvements.

Limited owners are free to execute improvements if there is no restriction imposed by law on their execution<sup>1</sup>. Some improvements have been considered to be waste for which a remainderman or reversioner could impeach the life tenant<sup>2</sup>. Apart from statute<sup>3</sup> and the express terms of the settlement or trust instrument from which the limited owner derives his estate or interest, a limited owner has no claim against the capital of the funds for the cost of buildings erected or improvements made by him<sup>4</sup>.

1 See PARA 485.

2 As to meliorating waste see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 432. As to the protection against liability for waste of a tenant for life carrying out authorised improvements see PARA 630; and **SETTLEMENTS** vol 42 (Reissue) PARA 986.

3 See PARA 615.

4 *Bostock v Blakeney* (1789) 2 Bro CC 653; *Caldecott v Brown* (1842) 2 Hare 144; *Mathias v Mathias* (1858) 3 Sm & G 552; *Rowley v Ginnever* [1897] 2 Ch 503.

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### 615. Financing of improvement to land.

Statutes concerned with the improvement of land may be grouped in five main classes, namely:

- 281 (1) statutes enabling landowners, including limited owners, to charge on the inheritance, or to pay out of capital, or to raise capital for, the cost of improvements<sup>1</sup>;
- 282 (2) statutes enabling tenants to cause their landlords to bear the whole or part of the cost of improvements<sup>2</sup>, or landlords to obtain some recoupment of the cost of improvements effected by them<sup>3</sup>;
- 283 (3) statutes enabling landowners to obtain financial assistance from public funds towards the cost of improvements<sup>4</sup>;
- 284 (4) statutes enabling public authorities to effect necessary or expedient works together with powers for the recovery of the cost thereof from owners<sup>5</sup>; and
- 285 (5) statutes enabling public authorities to compel owners to execute works of improvement on their land<sup>6</sup>.

There is also a series of private Acts constituting improvement companies which advance money for the execution of improvements<sup>7</sup>; and there are enactments under which certain universities and colleges may raise money on the security of land for the purpose of making improvements<sup>8</sup>.

1 See the Improvement of Land Act 1864; and PARA 619 et seq. As to the application of capital money arising under the Settled Land Act 1925 in payment for improvements see **SETTLEMENTS** vol 42 (Reissue) PARA 815. It should be noted, in particular, that such capital money may be applied in discharge of any charge in respect of an improvement created on a holding under the Agricultural Holdings Act 1986, or in payment for an improvement authorised by the Settled Land Act 1925 of any money expended and costs incurred by a landlord under the Agricultural Holdings Act 1986, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in Sch 7 (see PARA 432): see the Settled Land Act 1925 s 73(1)(ii), (iv); and **SETTLEMENTS** vol 42 (Reissue) PARA 808.

The improvements authorised by the Settled Land Act 1925 are divided into improvements the costs of which are not liable to be replaced by instalments (Sch 3 Pt I), those the costs of which the trustees or the court may require to be replaced by instalments (Sch 3 Pt II) and those the costs of which the trustees and the court must require to be so replaced (Sch 3 Pt III). Improvements of certain kinds have in effect been added to Sch 3, in particular:

- 76 (1) certain operations set out in the Hill Farming Improvements (Settled Land and Trusts for Sale) Regulations 1951, SI 1951/1816 (made under the Hill Farming Act 1946 s 11 (see PARA 620)) are added to the Settled Land Act 1925 Sch 3 Pt I; and
- 77 (2) improvements specified in the Agricultural Holdings Act 1986 Sch 7 (see PARA 432) are added to the Settled Land Act 1925 Sch 3 Pt I (Agricultural Holdings Act 1986 s 89(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4)),

but a tenant for life paying compensation to a farm tenant at the end of the tenancy for improvements carried out by that tenant during the tenancy cannot be reimbursed directly by the trustees of the settlement out of capital money which is subject to the trusts of the settlement (similarly this is so for tenant right and disturbance) (*Re Duke of Wellington's Parliamentary Estates* [1972] Ch 374, [1971] 2 All ER 1140). Even if a tenant for life can obtain a charge under the Agricultural Holdings Act 1986 s 86(1) (see PARA 477) it is uncertain whether he can require the trustees of the settlement to make a payment out of capital money under the Settled Land Act 1925 s 73(1)(ii) and even if the tenant for life could require the trustees of the settlement to do so, the tenant for life may still be liable to the remainderman: *Re Duke of Manchester's Settlement* [1910] 1 Ch 106.

In addition, matters in respect of which expenditure may be approved for grant under a scheme under the Agriculture Act 1970 s 29 (promotion of amalgamations and boundary adjustments by the Secretary of State and the Welsh Ministers: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1342), may be added to any of the parts of the Settled Land Act 1925 Sch 3 by regulations made under the Agriculture Act 1970 s 30(1) (supplementary provisions as to capital grants: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1348), but no such regulations were in force at the date at which this volume states the law.

2 Examples are the Agricultural Holdings Act 1986 ss 64-69, 94(1), (2), Sch 12 PARAS 5, 6(1), (2) (see PARA 425 et seq); and the Landlord and Tenant Act 1927 ss 1-3 and the Landlord and Tenant Act 1954 Pt III (ss 47-50) (see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 788 et seq).

3 Under the Agricultural Holdings Act 1986, a landlord who has carried out certain improvements may be entitled to charge an increased rent: see ss 13, 98(1); and PARA 340.

4 Examples are the various financial aids for improvements considered in PARA 620.

5 See eg the Public Health Act 1936 ss 291, 293, 294; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 123.

6 Examples are provisions of the land drainage legislation such as the Land Drainage Act 1991 ss 28-31 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 588) which relate to the restoration and improvement of ditches.

7 See PARAS 616-618.

8 See the Universities and College Estates Act 1925 s 30, Sch 1; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1379. Where, under powers conferred by the Universities and College Estates Act 1925, capital money is applied in payment for any improvement specified in the Agricultural Holdings Act 1986 (see PARA 620) no provision is in general to be made for replacing the money out of income: s 89(2).

## UPDATE

### 615 Financing of improvement to land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## ***B. COMPANIES EMPOWERED TO MAKE ADVANCES***

### **616. The origin of the improvement companies.**

The Private Money Drainage Act 1849<sup>1</sup> enabled landowners to charge by way of terminable rentcharge, upon the inheritance of the lands improved, money borrowed from other persons or advanced by themselves for the drainage of their lands<sup>2</sup>. Almost simultaneously several companies were incorporated by private Acts of Parliament for the purpose of executing improvements of land and making advances to landowners for the expenses of improvements on the security of terminable rentcharges arising out of the lands so improved. In 1864 the law relating to the improvement of land was amended and consolidated by the Improvement of Land Act 1864<sup>3</sup>.

1 The Private Money Drainage Act 1849 was repealed and replaced by the Improvement of Land Act 1864. The former Act was passed after the whole of the advances authorised by prior legislation (ie the Public Money Drainage Acts 1846, 1847 and 1848 (all repealed)), had been made, and the object of the Act was to enable money to be advanced in future from private sources.

2 As to rentcharges in general see **RENTCHARGES AND ANNUITIES**.

3 See PARA 619 et seq.

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### **617. Private improvement companies Acts.**

All the private Acts incorporating improvement companies<sup>1</sup> are in practically the same form as the Improvement of Land Act 1864, and contain substantially identical provisions as to:

- 286 (1) the persons who, as landowners<sup>2</sup>, may obtain advances;
- 287 (2) the proceedings leading to a provisional order, and ultimately to an absolute order charging the land with a rentcharge payable for a term of years<sup>3</sup>; and
- 288 (3) the priority of the rentcharge, and the remedies for recovering it, and other minor matters<sup>4</sup>.

1 See PARA 616.

2 See PARA 619.

3 See PARAS 624-631.

4 See PARAS 632-636. Private Acts incorporating improvement companies (see PARA 616) generally provide that a charge is to have priority over every other charge, whether existing at the time or made afterwards. Where two land improvement companies obtained charges under their respective Acts, each of which conferred priority in such terms, the charges were held to rank in order of date: *Pollock v Lands Improvement Co* (1888) 37 ChD 661. An improvement company's charge overrides encumbrances prior in date, although there has been no investigation of title: *General Land Drainage and Improvement Co v United Counties Bank Ltd* (1910) 103 LT 418. The charge must be registered as a land charge Class A or, in the case of registered land, protected by an entry on the register: see PARA 632.

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### **618. The Agricultural Mortgage Corporation.**

Pursuant to the Agricultural Credits Act 1928, a company limited by shares<sup>1</sup> was incorporated, called the Agricultural Mortgage Corporation Limited, and having for its principal objects the making of loans on mortgages of agricultural land and the making of loans under the Improvement of Land Acts 1864 and 1899<sup>2</sup>, for agricultural purposes<sup>3</sup>. All legislation relating to the establishment and operation of the Corporation has been repealed<sup>4</sup>.

1 See the Agricultural Credits Act 1928 s 2(1) (repealed).

2 See PARA 619 et seq.

3 See the Agricultural Credits Act 1928 s 1 (repealed).

4 Such repeals do not, however, affect any mortgages or debentures subsisting on 25 September 1991: Agriculture and Forestry (Financial Provisions) Act 1991 s 1(3).



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## (ii) By Whom Powers are Exercised

### 619. Meaning of 'landowner' within the Improvement Acts.

For the purpose of the Improvements Acts<sup>1</sup> the landowner is, in effect, the person<sup>2</sup> who is in actual possession or receipt of the rents and profits of the land, whatever his tenure<sup>3</sup> and without regard to the real amount of his interest, unless such person is a tenant under a lease or agreement which is not renewable and which has less than 25 years unexpired<sup>4</sup>. The purpose of the Improvement Acts is to enable owners, including limited owners, to raise money for improvements by means of rentcharges on the land<sup>5</sup>, and the object of the foregoing definition of landowner is to obviate the necessity of inquiring into the title of the landowner in connection with rentcharges. Provided that he is the landowner, as so defined, the rentcharge is valid, notwithstanding that his title is defective or that he has no title<sup>6</sup>.

As the landowner for the time being is bound to keep down the rentcharge<sup>7</sup>, the result is that, if the person who originated the terminable charge continues to be the landowner during the whole period of its existence, he will, although he is a limited owner, bear the whole cost of an improvement effected under these Acts, unless, under the powers of the Settled Land Act 1925, the rentcharge is redeemed out of capital money<sup>8</sup>.

1 The term 'Improvement Acts' is used to describe the Improvement of Land Act 1864 and the Acts which are construed as one with it (namely the Limited Owners Residences Act 1870 (see s 2), the Limited Owners Residences Act (1870) Amendment Act 1871 (see s 4), and the District Councils (Water Supply Facilities) Act 1897 (see s 7)), together with the Settled Land Act 1882 s 30 and the Improvement of Land Act 1899. There is no official collective title for these Acts (which are discussed generally in PARA 620 et seq), but the first and last Acts mentioned above may be cited together as the Improvement of Land Acts 1864 and 1899: see the Improvement of Land Act 1899 s 9(2).

2 'Person' includes a company or other corporation: Improvement of Land Act 1864 s 10.

3 Persons holding under a lease or an agreement for a lease for a term of years not renewable, of which less than 25 years remain unexpired at the time of the making of an application to the Secretary of State or the Welsh Ministers for improvements to be sanctioned, are excepted from the definition of 'landowner' and in that case the person who for the time being is in the actual receipt of the rent payable by the person so excepted (unless he is himself within the exception) is deemed, jointly with the person liable for its payment, to be the owner of such lands: see the Improvement of Land Act 1864 s 8. As to the Secretary of State and the Welsh Ministers see PARA 643.

4 See the Improvement of Land Act 1864 s 8. A tenant for life is a landowner within this definition, as is also the representative of a person who, but for a disability, would be a landowner as defined: see ss 8, 24 (amended by the Mental Treatment Act 1930 s 20(5); and the Mental Health Act 1983 Sch 5 para 29). 'Landowner' is similarly defined in the private Acts under which improvement companies make advances for improvements. As to these Acts see PARAS 616-617.

5 As to rentcharges see PARA 632 et seq.

6 *General Land Drainage and Improvement Co v United Counties Bank Ltd* (1910) 103 LT 418 (a case decided under a private Act). The landowner must, however, be a person capable of contracting for the execution of improvements on the land; thus a charge on the land of a limited company, the borrowings of which for the purpose of the improvements were in excess of the powers conferred on it by Act of Parliament, was invalid: *Baroness Wenlock v River Dee Co* (1888) 38 ChD 534, CA.

7 See the Improvement of Land Act 1864 s 66; and PARA 633.

8 See the Settled Land Act 1925 s 73(1)(xiii); PARA 615 note 1; and **SETTLEMENTS** vol 42 (Reissue) PARA 808.

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### **(iii) Improvements Authorised**

#### **620. Description of improvements authorised under the Improvement Acts.**

Improvements which may be carried out under the Improvement of Land Act 1864 were originally confined to improvements of an agricultural nature therein specified<sup>1</sup>, and proved to the satisfaction of the appropriate body, originally the Inclosure Commissioners and now the Secretary of State or the Welsh Ministers, to add to the permanent value of the lands to be charged to an extent equal to the expense thereof<sup>2</sup>. The improvements specified have been extended by subsequent Acts, and the improvements which may now be carried out may be summarised as follows:

- 289 (1) all improvements authorised by the Improvement of Land Act 1864<sup>3</sup> and the Settled Land Act 1925<sup>4</sup>;
- 290 (2) the making of works for the supply of sewage to lands for agricultural purposes<sup>5</sup>;
- 291 (3) the erection, completion or improvement of a mansion house with the usual and necessary outbuildings and appurtenances<sup>6</sup>.

1 See the Improvement of Land Act 1864 s 9. The improvements specified in that provision are: the drainage of land and the straightening, widening, deepening or otherwise improving of the drains, streams and watercourses of any land; the irrigation and warping of land; the embanking and weiring of land from the sea or tidal waters, or from lakes, rivers or streams, in a permanent manner; the inclosing of lands and the straightening of fences and redivision of fields; the reclamation of land, including all operations necessary thereto; the making of permanent farm roads and permanent tramways and railways and navigable canals for all purposes connected with the improvement of the estate; the clearing of land; the erection of labourers' cottages, farmhouses and other buildings required for farm purposes, and the improvement of and addition to labourers' cottages, farmhouses and other buildings for farm purposes already erected, such improvement or additions being of a permanent nature; planting for shelter; the construction or erection of any engine-houses, water-wheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, flood-gates or hatches, which will increase the value of any lands for agricultural purposes; the construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep and other agricultural stock and produce, and of lime, manure and other articles, and things for agricultural purposes, provided that the Secretary of State or the Welsh Ministers must be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof; and the execution of all such works as may be necessary for carrying into effect or deriving the full benefit of any matter mentioned above. The Settled Land Act 1882 s 30 extends to all improvements authorised by that Act the enumeration of improvements in the Improvement of Land Act 1864 s 9, and will now comprise, by virtue of the Interpretation Act 1978 ss 16(1), 17(2)(a), Sch 2 para 3, all improvements authorised by the Settled Land Act 1925 s 83, Sch 3: see note 5. As to the Secretary of State and the Welsh Ministers see PARA 643.

2 To this requirement (arising from the Improvement of Land Act 1864 ss 15, 25, 50) there are a few exceptions: see PARA 629 note 2.

3 See note 1.

4 See the Settled Land Act 1925 s 83, Sch 3 (see PARA 615); the Hill Farming Act 1946 s 11 (amended by the Livestock Rearing Act 1951 s 1(2)(b)); and the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); the Agriculture Act 1970 s 30 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1348); the Agricultural Holdings Act 1986 Sch 7 (see PARA 432); and the Hill Farming Improvements (Settled Land and Trusts for Sale) Regulations 1951, SI 1951/1816.

5 See the Public Health Act 1936 s 33; the Settled Land Act 1925 Sch 3 Pt I para (iv); and **SETTLEMENTS** vol 42 (Reissue) PARA 816.

6 lie under the Limited Owners Residences Act 1870 and the Limited Owners Residences Act (1870) Amendment Act 1871. The amount to be charged on any estate must not exceed two years' rental after certain deductions: Limited Owners Residences Act 1870 s 4 (but see PARA 435 note 3). The charge, which does not take priority over any incumbrance affecting the land charged at the time when the charge is created (s 9), may be upon the whole of the landowner's estate, that is, not only on the particular land upon which the improvement is executed, but also on any other lands, in the same neighbourhood, settled on the same trusts: see the Limited Owners Residences Act (1870) Amendment Act 1871 s 3. The improvement, if suitable, may be allowed by the Secretary of State or the Welsh Ministers, even though no increase of the permanent value of the lands in excess of the yearly charge is thereby effected: Limited Owners Residences Act 1870 s 7. As to the calculation of yearly value see s 5; and as to insurance see s 8. Cf the Settled Land Act 1925 Sch 3 Pt I para (xxv); and **SETTLEMENTS** vol 42 (Reissue) PARA 816.

## UPDATE

### 620 Description of improvements authorised under the Improvement Acts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/3. USE AND IMPROVEMENT OF LAND/(1) LAND IMPROVEMENT/(iii) Improvements Authorised/621. Powers of landowner regarding contributions made to district councils in respect of water supply.

### 621. Powers of landowner regarding contributions made to district councils in respect of water supply.

With the sanction of the Secretary of State or the Welsh Ministers<sup>1</sup>, contributions made by a landowner<sup>2</sup> towards the expenses incurred by a district council<sup>3</sup> for the purpose of supplying water to any of his lands may be charged on the land in the same manner and with the like effect as in the case of a charge under the Improvement of Land Act 1864<sup>4</sup>. Where the contribution is by agreement to be payable by half-yearly instalments, the charge may be made in favour of the district council, to secure the payment to it of the contribution<sup>5</sup>. If the supply is beneficial to residents or labourers on the estate, the charge may be sanctioned even though it is not shown that the supply will effect the increase usually required in the value of the land<sup>6</sup>. The requirements of the Improvement of Land Act 1864, with respect to matters and proceedings previous to the execution of a charge<sup>7</sup>, may be dispensed with in cases where the annual amount payable under the proposed charge does not exceed the rate or rent payable for water supply at the date of its execution<sup>8</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the meaning of 'landowner' see PARA 619.

3 As to the district councils in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

4 District Councils (Water Supply Facilities) Act 1897 s 1. As to charges under the Improvement of Land Act 1864 see PARA 624 et seq.

5 District Councils (Water Supply Facilities) Act 1897 s 2.

6 District Councils (Water Supply Facilities) Act 1897 s 4.

- 7 As to those requirements see PARA 624 et seq.
- 8 District Councils (Water Supply Facilities) Act 1897 s 5.

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## **622. Extent of power to charge settled land in respect of improvements.**

All improvements on which capital money arising under the Settled Land Act 1925 may be expended may be treated as improvements authorised by the Improvement of Land Act 1864 and their cost may be secured by way of terminable charges in accordance with the procedure provided by that Act<sup>1</sup>. Except by the adoption of this procedure, there is no jurisdiction to charge the inheritance of settled land with the cost of improvements the costs of which are not liable to be replaced by instalments<sup>2</sup>. Rentcharges may be created out of the settled land to repay the cost of improvements the costs of which may or must be required to be replaced by instalments<sup>3</sup>.

1 Settled Land Act 1882 s 30 (amended by the Statute Law (Repeals) Act 1993). For the procedure see PARA 624 et seq.

2 *Standing v Gray* [1903] 1 IR 49. The improvements the costs of which are not liable to be replaced by instalments are those specified in the Settled Land Act 1925 Sch 3 Pt I (see PARA 615 note 1).

3 See the Settled Land Act 1925 ss 84, 85; and **SETTLEMENTS** vol 42 (Reissue) PARA 808 et seq. Such rentcharges, however, take effect only as though limited by the settlement, and may be overreached; but they cannot be redeemed out of capital money: s 85(3). Power to pay for improvements out of capital is, however, not available to trustees holding under a trust for sale: *Re Wynn* [1955] 2 All ER 865, [1955] 1 WLR 940; *Re Boston's Will Trusts* [1956] Ch 395, [1956] 1 All ER 593. The improvements the costs of which may or must be required to be replaced by instalments are those specified in the Settled Land Act 1925 Sch 3 Pts II, III respectively (see PARA 615 note 1).

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## **623. Improvements authorised for land improvement companies.**

Improvement companies<sup>1</sup> are authorised, by resolution passed by three-quarters of the shareholders present at an extraordinary meeting specially summoned for the purpose, to adopt, as improvements authorised by their own Acts, all or any of the improvements which are authorised by the Improvement of Land Act 1864, or by the enactments amending and extending the scope of that statute<sup>2</sup>. The principal improvements specified in these private Acts are agricultural drainage, irrigation, embanking, inclosing and reclaiming, the making of farm roads, farm buildings and mills and waterworks for farm purposes, and planting<sup>3</sup>. The agreements for loans which the improvement companies have with their borrowers are not regulated by the Consumer Credit Act 1974<sup>4</sup>.

1 ie companies authorised by any Act of Parliament to execute or advance money for the execution of improvements of land: see the Improvement of Land Act 1899 s 7.

2 Improvement of Land Act 1899 s 1(3). For the improvements in question see PARA 620. Where a private company has so adopted the improvements authorised by the Limited Owners Residences Act 1870 and the Limited Owners Residences Act (1870) Amendment Act 1871, it may execute or advance money for the execution of them as though such improvements were authorised by its special improvement Act; it would seem therefore that the limitations imposed by the Limited Owners Residences Act 1870 and the Limited Owners Residences Act (1870) Amendment Act 1871 on the amount of money which may be expended and on the priority of the charge given will not apply in such cases. This conclusion seems to follow from the fact that the Improvement of Land Act 1899 s 1(3) proviso was repealed by the Improvement of Land Act (1899) Amendment Act 1925.

3 See the Acts cited in PARA 616.

4 See the Consumer Credit Act 1974 s 16(1)(e); and **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 100.

## UPDATE

### 623 Improvements authorised for land improvement companies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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## (iv) Procedure for Obtaining Land Improvement Charge

### A. APPLICATION AND INVESTIGATION

#### 624. Application for obtaining land improvement charge.

An application to the Secretary of State or the Welsh Ministers<sup>1</sup> for the purpose of obtaining a charge for improvements under the Improvement of Land Act 1864, or the Acts amending or extending it<sup>2</sup>, may be made by any landowner<sup>3</sup>.

In the case of persons under a disability, such as minors, the application may be made by their guardians or other representatives<sup>4</sup>. Where the land to which the application relates is held in right of an ecclesiastical benefice, the Secretary of State or the Welsh Ministers must not sanction the improvement until the patron of the benefice and the bishop of the diocese have signified, by writing, their consents to the application<sup>5</sup>. Joint applications may be made by several landowners<sup>6</sup>.

The application must be made in the prescribed form, but it may be withdrawn or altered until the proposed improvements have been sanctioned by the Secretary of State or the Welsh Ministers<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to those Acts see PARA 619.

- 3 See the Improvement of Land Act 1864 s 11. As to the meaning of 'landowner' see PARA 619.
- 4 See the Improvement of Land Act 1864 s 24. As to judicial functions and powers with respect to the property and affairs of a persons lacking capacity see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 595 et seq.
- 5 Improvement of Land Act 1864 s 20.
- 6 See the Improvement of Land Act 1864 s 12. Adjoining lands or easements, or conveniences over them, may be acquired, for the purposes of the execution of improvements, from persons enabled to sell or dispose of any such adjoining lands etc under the Lands Clauses Consolidation Act 1845: Improvement of Land Act 1864 s 32. As to such persons see the Lands Clauses Consolidation Act 1845 ss 6, 7; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 550 et seq. The amount of the purchase money may be added to the charge: Improvement of Land Act 1864 s 49.
- 7 Improvement of Land Act 1864 s 11. The forms may be issued by the Secretary of State or the Welsh Ministers from time to time: s 13.

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#### **625. Investigation by the Secretary of State or the Welsh Ministers into application for land improvement charge.**

If the Secretary of State sees or the Welsh Ministers<sup>1</sup> see fit to entertain the application, he or they may appoint an inspector, who is to report, except where the proposed outlay is to be made in respect of planting only, on whether proposed improvements will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for<sup>2</sup>. The applicant may also be required to give security for the expenses of such investigation<sup>3</sup>, and any alterations in the proposed improvements may be required where considered expedient<sup>4</sup>.

- 1 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 2 Improvement of Land Act 1864 s 15. As to improvements under the Limited Owners Residences Act 1870 and the Limited Owners Residences Act (1870) Amendment Act 1871 see PARA 620 note 6.
- 3 Improvement of Land Act 1864 s 14 (amended by the Statute Law (Repeals) Act 1993).
- 4 Improvement of Land Act 1864 s 16.

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#### **626. Interference by proposed improvement with rivers and canals.**

If in the opinion of the Secretary of State or the Welsh Ministers<sup>1</sup> any proposed improvement will interfere with any navigable river or canal, the landowner must give notice<sup>2</sup> in writing to the body having the management or control of that river or canal, and, in the event of the body

dissenting, an order of the court must be obtained authorising the Secretary of State or the Welsh Ministers to sanction the improvement<sup>3</sup>.

Provision is also made for works to be carried out in accordance with plans deposited with the river or canal authority, and under the supervision of its engineer, and for saving the rights of such authorities<sup>4</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 Notices under the Improvement of Land Act 1864 may be served by registered post or recorded delivery; if the person to be served has no residence or place of business in this country or it cannot be ascertained notices may be served in such manner as the Secretary of State or the Welsh Ministers may direct or approve: see s 7 (amended by SI 2001/1149); and the Recorded Delivery Service Act 1962 s 1(1).

3 Improvement of Land Act 1864 ss 19, 21 (amended by the Settled Land Act 1882 s 64, Schedule; the Statute Law Revision Act 1893; and the Statute Law (Repeals) Act 1974). The costs of such application, which is made by summons to a judge of the Chancery Division of the High Court, are in the discretion of the judge, and if he so directs may be deemed to be part of the expenses of the application for the proposed improvements: Improvement of Land Act 1864 ss 21, 23 (amended by the Settled Land Act 1882 s 64, Schedule; the Administration of Justice Act 1965 s 34, Sch 2; and the Statute Law (Repeals) Act 1974).

4 See the Improvement of Land Act 1864 s 47.

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### **627. Rights and powers of drainage and other authorities to remain unaffected by Improvement Acts.**

The rights, privileges, powers and authorities vested in or to be discharged by any drainage authority are not lessened or altered by the Improvement of Land Act 1864, and no work in connection with improvements may be done to interfere in any way with any sewers, drains or watercourses under the control of any drainage authority: new sewers, drains, watercourses or works of drainage may not be made within the district and jurisdiction of any drainage authority unless previously approved by that authority; and, if and when they are made, they are to be and remain subject in all respects to that jurisdiction<sup>1</sup>. Similar protection is accorded to the interests of the Environment Agency in relation to the river Thames<sup>2</sup>, and more generally to the London borough councils or Environment Agency<sup>3</sup> and water companies<sup>4</sup>. Special consents are also required in cases affecting Crown land<sup>5</sup>, the rights of certain government departments<sup>6</sup>, harbours, tidal and navigable waters, and the foreshore<sup>7</sup>.

1 Improvement of Land Act 1864 s 43. This provision refers to commissioners of sewers, but these were replaced by catchment boards and drainage boards constituted (or, in the case of certain drainage boards, continued) under the Land Drainage Act 1930 ss 1-3, 17, 18, 83(2), (3) (repealed). The catchment boards so constituted were succeeded by river boards constituted under the River Boards Act 1948 (repealed); by river authorities constituted under the Water Resources Act 1963 s 3 (repealed); by water authorities under the Water Act 1972 Sch 1 (repealed); by the National Rivers Authority under the Water Act 1989 Sch 1; and now by the Environment Agency under the Environment Act 1995 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq). Drainage boards were continued under the Land Drainage Act 1976 s 6 (repealed), and further continued as internal drainage boards within the areas of regional flood defence committees first under the Water Act 1989 s 140 (repealed) and now under the Land Drainage Act 1991 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq).

As to the provisions of the Land Drainage Act 1991 ss 22, 30, whereby agricultural land tribunals, the Secretary of State and the Welsh Ministers are empowered under certain circumstances to authorise work to be done on

land for drainage purposes, see **WATER AND WATERWAYS** vol 101 (2009) PARAS 587-588. As to the Secretary of State and the Welsh Ministers see PARA 643. As to agricultural land tribunals see PARAS 670-673.

2 See the Improvement of Land Act 1864 s 44. This provision refers to the Conservators of the river Thames; they were abolished by the Water Act 1973 s 33(d) (repealed) and their powers made exercisable by the Thames Water Authority, subsequently by the National Rivers Authority, and now by the Environment Agency (see note 1).

3 Improvement of Land Act 1864 s 45. That provision refers to the Metropolitan Board of Works, whose powers, duties and liabilities were transferred to the London County Council by the Local Government Act 1888 s 40(8) (repealed). By the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, the functions of that council were transferred to the Greater London Council, which in turn was abolished by the Local Government Act 1985 s 2 and its functions under the Land Drainage Act 1976 were transferred to the Thames Water Authority, the London borough councils and the Common Council of the City of London under the Local Government Act 1985 Sch 7 (repealed), to the National Rivers Authority or water companies by the Water Act 1989 s 4 (repealed), s 136, Sch 2, Sch 15 (repealed), and then to the Environment Agency by the Environment Act 1995 s 2 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 70; **WATER AND WATERWAYS** vol 100 (2009) PARA 12). As to administrative areas and authorities in London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

4 Improvement of Land Act 1864 s 46.

5 Improvement of Land Act 1864 ss 35, 37, 38 (dealing also with land of the Duchies of Cornwall and Lancaster).

6 Improvement of Land Act 1864 ss 36, 39, 42.

7 See the Improvement of Land Act 1864 ss 40, 41.

## UPDATE

### **627 Rights and powers of drainage and other authorities to remain unaffected by Improvement Acts**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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### **628. Delivery of specifications of improvements under Improvement Acts.**

Before the commencement of any sanctioned improvements, detailed specifications and, in the case of buildings and in any other case if required, detailed plans or drawings, must be delivered to and approved by the Secretary of State or the Welsh Ministers<sup>1</sup>, whose officers may visit the site and report on the proposals<sup>2</sup>. The Secretary of State and the Welsh Ministers also have the power to inspect the improvements while in progress<sup>3</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 Improvement of Land Act 1864 ss 30, 31.

3 Improvement of Land Act 1864 s 48.



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## ***B. PROVISIONAL AND ABSOLUTE ORDER***

### **629. Provisional order for charge of sanctioned improvements under Improvement Acts.**

The Secretary of State or the Welsh Ministers<sup>1</sup>, if satisfied as to the permanent value<sup>2</sup> of proposed improvements, may sanction the improvements by an order called a provisional order<sup>3</sup>. The provisional order must name the landowner to whom it is issued, express the greatest sum to be charged and the rate of interest and term of years for the repayment thereof (the interest rate to be such as the Secretary of State or the Welsh Ministers may from time to time authorise<sup>4</sup>, and the term not to exceed 40 years<sup>5</sup>), specify the lands on which such repayment is to be charged<sup>6</sup>, and express, or refer to some contract or other document expressing, the general scheme of the improvements to be executed<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 The improvements must effect a permanent increase in the yearly value of the land exceeding the yearly amount proposed to be charged thereon: see the Improvement of Land Act 1864 s 25. This rule does not apply in the following cases: planting (see s 15 proviso; and PARA 625); erection of a mansion house under the Limited Owners Residences Act 1870 if the discretion under s 7 (see PARA 620 note 6) is exercised; erection of a farmhouse or cottage for occupation by a person cultivating lands to be charged, if the Secretary of State or the Welsh Ministers are satisfied that such erection is required for the proper cultivation of the land (Agricultural Credits Act 1923 s 3(3)).

3 See the Improvement of Land Act 1864 ss 25, 27 (s 25 amended by the Statute Law (Repeals) Act 1993). The form of order is set out in the Improvement of Land Act 1864 Sch (A).

4 Agricultural Credits Act 1923 s 3(1).

5 Improvement of Land Act 1899 s 1(1).

6 The lands charged may include not only the lands improved, but any other lands shown by statutory declaration to the satisfaction of the Secretary of State or the Welsh Ministers to be held for the same estates and interests free from incumbrances or subject to the same incumbrances: Improvement of Land Act 1899 s 1(2).

7 Improvement of Land Act 1864 s 26. Section 26 also provides for provisional orders to be drawn up, at the landowner's request, so as to take effect under the private Act of a company with which the landowner has contracted for a loan or for the improvements: s 26.

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### **630. Effect of provisional order regarding sanctioned improvements within Improvement Acts.**

A provisional order creates in favour of the landowner named in it a title to an absolute charge, on the completion of the improvements, which he may assign by indorsement to any other person, either absolutely or by way of security<sup>1</sup>. Modifications of or alterations in any matter contained in the order may be sanctioned by the Secretary of State or the Welsh Ministers<sup>2</sup> with the consent of every person interested, provided that no modification or alteration increases the sum to be charged or extends or curtails the term of repayment<sup>3</sup>.

A provisional order authorises the landowner, his successors, representatives, employees or contractors to enter the land and carry out the improvements, and is a complete protection from impeachment of waste<sup>4</sup>.

1 See the Improvement of Land Act 1864 s 27.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 See the Improvement of Land Act 1864 s 29. Although there is no express power so to modify a provisional order, an absolute order may be modified under the Improvement of Land Act 1899 so as to extend the term of repayment in respect of the planting of woods or trees: s 1(4) (amended by the Statute Law (Repeals) Act 1993).

4 See the Improvement of Land Act 1864 s 34. As to liability for waste see **SETTLEMENTS** vol 42 (Reissue) PARA 986. As to the nature of waste generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 431.

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### **631. Absolute order for charge following execution of sanctioned improvements within Improvement Acts.**

After the improvements sanctioned have been satisfactorily executed, the Secretary of State or the Welsh Ministers<sup>1</sup> execute under seal a charge upon the fee simple of the lands comprised in the provisional order for the sum expressed to be chargeable by that order in respect of the improvements<sup>2</sup>, with interest thereon<sup>3</sup>. This charge is called an absolute order<sup>4</sup>. Its execution is conclusive evidence of the validity of the charge<sup>5</sup>, but not of the capacity of the landowner to contract<sup>6</sup>. Copies of absolute orders are kept by the Secretary of State or the Welsh Ministers, and any copy authenticated by seal is evidence of the contents of the absolute order<sup>7</sup>. In the event of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements, then if his successor completes the work, absolute orders will be made in favour of both the predecessor, or his representatives, and the successor in proportion to the amounts expended<sup>8</sup>. If the successor does not proceed with the works within three months, his predecessor, or his representatives, may complete the works and entitle themselves to the absolute order<sup>9</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 The expenses of the application to the Secretary of State or the Welsh Ministers and of contracts relating to the execution of the improvements or the advance of money relating to their execution, may be included in the charge: Improvement of Land Act 1864 s 50 (amended by the Statute Law (Repeals) Act 1993).

3 See the Improvement of Land Act 1864 s 49. The absolute order may be made after part of the improvements has been completed, for a proportional part of the sum involved: s 49. See also ss 57, 58 for the right of a landowner to require a similar charge to be executed in respect of costs incurred by him for public or general works of drainage or other improvements required to be made and authorised to be charged on the inheritance under other Acts, royal charters, commission under the great seal or the seal of the Duchy of

Lancaster; but note that there do not appear to be any modern powers which could bring these provisions into operation. For the power to create the charge in such form as to take effect under the private Act of an improvement company see s 53. The charges are to be in the form in Sch (B): see s 52.

4 Improvement of Land Act 1864 s 51.

5 Improvement of Land Act 1864 s 55.

6 See *Baroness Wenlock v River Dee Co* (1888) 38 ChD 534, CA; and PARA 619 note 6.

7 Improvement of Land Act 1864 s 51.

8 See the Improvement of Land Act 1864 s 28. Section 28 also makes provision as to the right of the successor to terminate the proceedings upon certain conditions and for the right of the predecessor's assignee to complete the improvements.

9 Improvement of Land Act 1864 s 25.

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### **C. EFFECT, REGISTRATION AND ENFORCEMENT**

#### **632. Effect of charge created by absolute order within Improvement Acts.**

The charge created by an absolute order takes effect by way of rentcharge payable by half-yearly instalments, which include both principal and interest, for the term of years fixed by the provisional order<sup>1</sup>. It creates a charge on the lands for the amount from time to time remaining undischarged, with priority over all existing and future incumbrances affecting the lands, whether created under the powers of any Act of Parliament or otherwise, except charges created under the Improvement of Land Act 1864 or charges of prior date under other Acts existing in 1864 and authorising the charging of lands with the expenses of improvements<sup>2</sup>. Absolute orders affecting unregistered land may be entered in the register of land charges as Class A land charges, and if not so registered before the completion of the purchase are void against a purchaser of the land charged or of any interest in that land<sup>3</sup>.

1 Improvement of Land Act 1864 s 51. As to the term of years see PARA 629. Terminable rentcharges of this nature can only be redeemed before the expiration of the term by agreement (*Re Knatchbull's Settled Estate* (1885) 29 ChD 588 at 592, 595, CA; *Re Lord Egmont's Settled Estates* (1890) 45 ChD 395 at 400, CA). In *Re Earl of Strafford and Maples* [1896] 1 Ch 235, CA, a part of lands charged was released by agreement between the tenant for life and the owner of the charge.

2 Improvement of Land Act 1864 s 59. This provision also mentions certain obsolete exceptions to the rule of priority, namely charges under Acts authorising advances of public money for the improvement of land, tithe commutation rentcharges, quit rents, Crown rents, chief rents and other charges incidental to tenure. These incidents of tenure were extinguished by the Law of Property Act 1922 ss 138, 139 (repealed): see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 641 et seq. Tithe rentcharges were extinguished by the Tithe Act 1936 s 1 (repealed): see **ECCLESIASTICAL LAW** vol 14 PARA 1213.

Where part only of the land charged is subject to a mortgage or other incumbrance, the charge created under the Improvement of Land Act 1864 has priority only to the extent of a due proportion of the charge as soon as it has been ascertained: s 59 proviso. As to apportionment see s 68; and PARA 634. As to rentcharges created under the Limited Owners Residences Act 1870 and the Limited Owners Residences Act (1870) Amendment Act 1871 see PARA 620 note 6. As to rentcharges under the private Acts of land improvement companies see PARA 617; and *Pollock v Lands Improvement Co* (1888) 37 ChD 661.

3 See the Land Charges Act 1972 ss 2(1), (2), 4(2), 17(1); and **LAND CHARGES** vol 26 (2004 Reissue) PARAS 622, 624, 642. Land improvement charges for securing money, if registered before 1970, take effect as if created by a deed of charge by way of legal mortgage, but without prejudice to the priority of the charge; but they do not have that effect if registered after that date: see s 4(1); and **LAND CHARGES** vol 26 (2004 Reissue) PARA 626. If the charge was registered before 1 January 1970, any body corporate which, but for the charge, would have power to advance money on the security of the estate or interest affected by it, has that power notwithstanding the charge: see s 4(4); and **LAND CHARGES** vol 26 (2004 Reissue) PARA 626.

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### **633. Enforcement of charge within Improvement Acts.**

Provision is made for the charging and payment of interest where charges fall into arrears<sup>1</sup>. If these statutory remedies are unavailing, a sale<sup>2</sup> or mortgage for the purpose of raising the charge may be ordered by the High Court, under its equitable jurisdiction<sup>3</sup>, but there is no remedy against the landowner personally<sup>4</sup>. Charges are assignable<sup>5</sup>, and must be kept down by the tenant for life as between him and the remainderman<sup>6</sup>. If the charge is paid by a tenant or occupier at a rent, he may, except when he has joined in the application or duly consented to be charged, deduct the amount from the rent payable to the landowner<sup>7</sup>.

1 See the Improvement of Land Act 1864 s 64. The arrears are not to bear interest for a longer period than six months, but interest at the rate of 5% for any period not exceeding six months is recoverable in the same manner as the sum in arrear. If at the expiration of six months from the time of a payment falling into arrear there is not upon the land charged a sufficient distress to answer the payment, interest for six months and the cost of the distress, the arrears continue to bear interest at the rate of 5% per annum until payment: s 64.

2 In the case of a charge registered as a land charge of Class A before 1 January 1970, the charge takes effect as if it had been created by deed of charge by way of legal mortgage, and consequently the chargee will have the statutory powers of sale under the Law of Property Act 1925 s 101: see **MORTGAGE** vol 77 (2010) PARA 443 et seq.

3 *Scottish Widows' Fund v Craig* (1882) 20 ChD 208.

4 *Scottish Drainage and Improvement Co v Campbell* (1889) 14 App Cas 139, HL. This was a case of a Scottish land improvement company, but the decision would seem to be applicable to all charges, whether created under the Improvement of Land Act 1864 or under the private Act of an English improvement company.

5 See the Improvement of Land Act 1864 s 65. The assignment is by deed duly stamped, and notice of the assignment should be sent to the Secretary of State or the Welsh Ministers: s 65. For the form of assignment see Sch (C). As to the Secretary of State and the Welsh Ministers see PARA 643.

6 Improvement of Land Act 1864 s 66.

7 Improvement of Land Act 1864 s 67.

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## **D. APPORTIONMENT, RELEASE AND REDEMPTION**

### **634. Apportionment and release of charges within Improvement Acts.**

Charges created under the Improvement of Land Act 1864, or any other Act authorising the creation of improvement charges by the Secretary of State and the Welsh Ministers<sup>1</sup>, may, with the consent of the landowner or separate owners and with due notice to any assignee or his representative, be apportioned by the Secretary of State or the Welsh Ministers among the lands charged, or part of the land may be released, but no apportioned charge can be less than £1 for each half-yearly payment<sup>2</sup>. The apportioned charge is recoverable out of the lands charged by the order of apportionment<sup>3</sup>. An apportionment or release is made by order under seal of the Secretary of State or the Welsh Ministers, and the order may comprise all or any number of rentcharges existing by virtue of previous absolute orders<sup>4</sup>, any copy authenticated by the seal of the Secretary of State or the Welsh Ministers being conclusive evidence of the contents of the order for apportionment or release<sup>5</sup>. Provisions relating to the registration of charges created by absolute orders<sup>6</sup> apply also to the separate charges created by an order of apportionment<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 See the Improvement of Land Act 1864 s 68 (amended by the Improvement of Land Act 1899 Sch 2; the Mental Health Act 1959 Sch 7 Pt I; the Mental Capacity Act 2005 Sch 6 para 2; and by virtue of the Decimal Currency Act 1969 s 10(1)).

3 Improvement of Land Act 1864 s 70.

4 Improvement of Land Act 1864 s 71.

5 Improvement of Land Act 1864 s 69 (amended by the Improvement of Land Act 1899 Sch 2; and the Statute Law (Repeals) Act 1974). The form of order is set out in the Improvement of Land Act 1864 Schs (D), (E).

6 See PARA 632.

7 This follows because the apportionment creates separate and distinct charges: see the Improvement of Land Act 1864 s 68 (as amended: see note 2).

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### **635. Exoneration and redemption within Improvement Acts in the case of settled estates.**

Provision is made for limited owners to exonerate one part of a settled estate from a charge by charging it upon another part<sup>1</sup>, and for the redemption of improvement rentcharges out of capital money<sup>2</sup>.

1 See the Settled Land Act 1925 ss 69, 82; and **SETTLEMENTS** vol 42 (Reissue) PARAS 851, 853.

2 See the Settled Land Act 1925 s 73(1)(xiii); but see PARA 615 note 1; and see also **SETTLEMENTS** vol 42 (Reissue) PARA 808.

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Improvement Charge/D. APPORTIONMENT, RELEASE AND REDEMPTION/636. Loans by Agricultural Mortgage Corporation.

### **636. Loans by Agricultural Mortgage Corporation.**

Where a loan has been made by the Agricultural Mortgage Corporation Limited<sup>1</sup>, for defraying the expenses of an improvement of any specified kind<sup>2</sup>, and the loan is, under the terms of the mortgage securing the loan, repayable by instalments, the repayment secured by the mortgage is deemed to constitute an improvement rentcharge which may be redeemed out of capital money, and when it is so redeemed the tenant for life must maintain and insure the improvement<sup>3</sup>.

1 See PARA 618.

2 le of a kind authorised by the Settled Land Act 1925 Sch 3 Pt I.

3 See the Settled Land Act 1925 ss 73(1)(xiii), 88, Sch 3 Pt I; and **SETTLEMENTS** vol 42 (Reissue) PARAS 808, 964. The reference to 'redemption' includes a reference to discharging, as it falls due, so much of any periodical payment as represents repayment of capital: Agriculture Act 1967 s 68.

### **UPDATE**

### **636 Loans by Agricultural Mortgage Corporation**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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### **(v) Maintenance and Repair of Improvements**

### **637. Maintenance and repair of improvements within Improvement Acts.**

During the continuance of a charge, the person bound to make the periodical payments of such charge is liable to maintain the works in respect of which the charge is made, and he may, if necessary, enter on adjoining lands for that purpose<sup>1</sup>. If required, he must certify to the Secretary of State or the Welsh Ministers<sup>2</sup> the state of the improvements<sup>3</sup>. He is also bound to keep insured against fire all improvements susceptible of damage by fire; if he fails to insure, the person entitled to the charge may effect the insurance at the expense of the person liable to insure<sup>4</sup>. If the person bound to make the periodical payments neglects to maintain improvements, he will be liable to an action by a remainderman for damage<sup>5</sup>, and, in addition, the Secretary of State or the Welsh Ministers may inspect the improvements and cause the necessary works to be executed, the expense being recoverable as if it had been part of the charge<sup>6</sup>. If an improvement consisting of an embankment or work constructed in, under or across any tidal water or navigable river is abandoned or falls into decay, the nuisance may be abated by the Secretary of State or the Welsh Ministers at the cost of the landowner<sup>7</sup>. If, however, the maintenance of any improvements becomes unnecessary, the person bound to make the periodical payments may be relieved from liability for maintenance on a certificate of

the Secretary of State or the Welsh Ministers given after inspection and notice to interested parties<sup>8</sup>.

- 1 See the Improvement of Land Act 1864 ss 72, 73 (both amended by the Statute Law (Repeals) Act 1993).
- 2 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 3 Improvement of Land Act 1864 s 72 (as amended: see note 1).
- 4 Improvement of Land Act 1864 s 74.
- 5 Improvement of Land Act 1864 s 72 (as amended: see note 1).
- 6 Improvement of Land Act 1864 s 75. As to recovery of a charge see PARA 634.
- 7 Improvement of Land Act 1864 s 77 (amended by the Statute Law (Repeals) Act 1993).
- 8 Improvement of Land Act 1864 s 76.

## **UPDATE**

### **637 Maintenance and repair of improvements within Improvement Acts**

NOTE 1--Improvement of Land Act 1864 s 73 further amended: SI 2009/1307.

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## **(2) RESTRUCTURING OF HOLDINGS AND USE OF UNCULTIVATED LAND**

### **638. Projects subject to environmental impact assessment.**

Provision is made for the subjection of projects<sup>1</sup> for the restructuring of rural land holdings, and projects to increase the productivity for agriculture<sup>2</sup> of uncultivated land<sup>3</sup> or semi-natural areas, to environmental impact assessments<sup>4</sup>. Those provisions, which were made pursuant to the powers of the Secretary of State and the Welsh Ministers to legislate in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment and the conservation of natural habitats and of wild flora and fauna<sup>5</sup>, apply to any such projects other than those specifically exempted by the regulations<sup>6</sup>. These provisions are also enforced pursuant to the operation of the common agricultural policy<sup>7</sup>.

1 'Project' means the execution of construction works or other installations or schemes or other interventions in the natural surroundings and landscape: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1).

2 As to the meanings of 'agriculture' and 'agricultural' see PARA 324 (definition applied by the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1)).

3 In England, 'uncultivated land' means land which has not been cultivated in the previous 15 years and 'cultivated' means cultivated by physical means (including ploughing and harrowing) or chemical means (including the application of fertilisers): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1). Those expressions are not defined for the purposes of the

Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933. In both England and Wales 'uncultivated land project' means a project to increase the productivity for agriculture of uncultivated land or a semi-natural area (including projects to increase the productivity for agriculture of such land to below the norm): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1).

4 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522; the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933; and PARA 639 et seq.

5 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, preamble; Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, preamble. As to the Secretary of State and the Welsh Ministers see PARA 643. The regulations were made under the European Communities Act 1972 s 2(2) and implement, in relation to the use of uncultivated land and semi-natural areas for agricultural purposes, EC Council Directive 85/337 (OJ L175, 5.7.85, p 40) on the assessment of the effects of certain public and private projects on the environment (the 'EIA Directive'), and EC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive') in so far as applicable to such projects, and unless it is otherwise provided, expressions used both in the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, and in the EIA Directive or in the Habitats Directive have the same meaning in those regulations as they have in those directives: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1), (2); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1), (2).

6 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(1).

A project is exempt if it:

- 78 (1) is a project mentioned in the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228, reg 3(2) (see **FORESTRY** vol 52 (2009) PARA 12) (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(a); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(a));
- 79 (2) constitutes development to which the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 487-515) apply (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(b); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(b));
- 80 (3) constitutes the carrying out of improvement works by a drainage body within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, SI 1999/1783 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 649 et seq) (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(c); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(c));
- 81 (4) constitutes a 'relevant project' under the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, SI 2003/164, reg 3(2), (3) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 271) (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(d); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(d));
- 82 (5) constitutes the removal of a hedgerow under the Hedgerows Regulations 1997, SI 1997/1160, reg 5(1) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 703) (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(e); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(e)); or
- 83 (6) constitutes the erection of any building or fence, or the construction of any other work, for which consent is required under the Law of Property Act 1925 s 194 (see **COMMONS** vol 13 (2009) PARA 568) (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(2)(f); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(2)(f)).

A project is also exempt to the extent that the Secretary of State directs or the Welsh Ministers direct, in accordance with art 2(3) of the EIA Directive (see note 5), that it is to be exempt from the Environmental Impact



Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 4-36 or, as the case may be, the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 4-35: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(3); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(3). Where the Secretary of State proposes or the Welsh Ministers propose to give such a direction he or they must consider whether any other kind of assessment of the project would be appropriate and must take such steps as he or they consider appropriate to bring to the attention of the public the information considered in making the direction and the reasons for doing so and the information obtained from any such assessment of the project: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(5); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(5).

In the case of a project which either Natural England decides or the Welsh Ministers decide is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(3) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(3) is exercisable only to the extent that compliance with the Habitats Directive (see note 5) is secured in relation to the project: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 3(4); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 3(4). As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523. 'European site' means those sites described in the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, reg 10(1)(a), (b), (d) or (e) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 729): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1).

7 See the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005, SI 2005/3459, Schedule para 16; the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004, SI 2004/3280, Schedule para 15; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 781.

## UPDATE

### 638 Projects subject to environmental impact assessment

NOTE 4--Semi-natural land is land where there has been some interference with landscape, but natural qualities which preceded or continued alongside man's activities are still clearly and obviously evident in the natural environmental capital of the area: *R (on the application of Wye Valley Action Association Ltd) v Herefordshire Council* [2009] EWHC 3428 (Admin), [2010] All ER (D) 44 (Jan).

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### 639. Screening of potentially significant projects by Natural England or Welsh Ministers.

A person must not begin or carry out an uncultivated land project<sup>1</sup> or a restructuring project<sup>2</sup> of an extent which is equal to or exceeds the threshold applicable to it<sup>3</sup> (or in relation to which Natural England<sup>4</sup> has excluded the operation of such thresholds<sup>5</sup>) unless he has first obtained a screening decision<sup>6</sup> permitting the project to proceed<sup>7</sup>. An application for a screening decision must be made to Natural England or the Welsh Ministers<sup>8</sup> who must decide whether or not a project is likely to have significant effects on the environment<sup>9</sup>, in which case it is a 'significant project'<sup>10</sup>. If Natural England or the Welsh Ministers fails or fail to make or notify a screening decision<sup>11</sup> the applicant may notify Natural England or the Welsh Ministers that he intends to treat that failure as a decision that the project is a significant project<sup>12</sup>. A screening decision, whether made or deemed, has effect for three years<sup>13</sup>.

1 As to the meanings of 'project', 'uncultivated land project' and (in England) 'uncultivated land' see PARA 638 notes 1, 3.

2 'Restructuring project' means a project for the restructuring of rural land holdings: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1).

3 The applicable threshold (which relates to the area of land likely to be affected by the project) is calculated in accordance with the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 5, Sch 1 and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 5, Sch 1.

4 As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

5 If Natural England believes that a project which is likely to fall below the threshold at which a screening decision is required would nonetheless be likely to have significant effects on the environment it may issue a 'screening notice' providing that the thresholds do not apply to the area of land in question (see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 6, Sch 2), and a person must not begin or carry out any uncultivated land project or restructuring project on land to which a relevant screening notice (ie a screening notice which states that it applies to the type of project which is to be carried out (reg 4(3))) applies unless he has first obtained a screening decision (see note 6) permitting the project to proceed (reg 4(2)). There is a right of appeal in England against the service of a screening notice, but not in Wales: see PARA 642.

6 'Screening decision' means a decision made by Natural England or the Welsh Ministers under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(1) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(1) (see the text and note 9) or a decision deemed to be made by Natural England or the Welsh Ministers under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(7) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(7) (see note 12): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1). As to the Welsh Ministers see PARA 643.

7 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 4(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 4(1), (2). Any person who begins or carries out an uncultivated land project or a restructuring project in breach of the requirement for a screening decision is guilty of an offence, and may be served with a stop notice or a remediation notice: see PARA 641.

8 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 7(1) (a); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 6(1)(a). The application must contain specified information relating to the project and identifying the affected land: see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 7(1)(b)-(d), (2); and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 6(1)(b)-(d), (2).

9 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(1). Before making a screening decision, Natural England and the Welsh Ministers may consult, as applicable, any of the Historic Buildings and Monuments Commission for England (known as English Heritage), the Countryside Council for Wales, the Environment Agency, and any other public authority, statutory body or other organisation which Natural England, the Secretary of State or the Welsh Ministers consider has any interest in or holds any information which might be relevant to the project (the 'consultation bodies'): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 2(1), 8(3); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 2(1), 7(3). The decision must be notified to the applicant and registered, and relevant consultation bodies must be notified, within 35 days: see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(4), (5); and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(4), (5). If Natural England decides or the Welsh Ministers decide that a project is likely to have a significant effect on a European site (either alone or in combination with other projects), and the project is not directly connected with or necessary for the management of the site, the project must be treated as being likely to have significant effects on the environment: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(2); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(2). There is a right of appeal against a screening decision: see PARA 642.

As to the Secretary of State see PARA 643. As to the meaning of 'European site' see PARA 638 note 6. As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq. As to the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 524. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

10 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(1) (a 'significant project' is an uncultivated land project or a restructuring project which Natural England or the Welsh Ministers has or have decided under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(1) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(1) (see the text and note 9), or is or are deemed to have decided under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(7) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(7) (see note 12), is likely to have significant effects on the environment).

If, after Natural England or the Welsh Ministers has or have made, or is or are deemed to have made, a decision that the project is a significant project, they receive further information or representations and as a result of that further information or those representations decide that the project is not a significant project, they must take all the steps in the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(4) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(4) (see note 9) in respect of that new decision: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(8); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(8). A decision that a project is not a significant project may also be reviewed if the site subsequently becomes a European site: see reg 21(a), Sch 4.

A person aggrieved by a decision of Natural England or the Welsh Ministers that a project is not a significant project may apply to the High Court for an order quashing the decision: see PARA 642.

11 le within the period referred to in the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(5) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(5) (see note 9).

12 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(6); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(6). Where the applicant has so notified Natural England or the Welsh Ministers, Natural England or the Welsh Ministers is or are deemed to have decided on the date of that notification that the project is a significant project: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(7); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(7).

13 If the project to which a screening decision relates is not begun within a period of three years beginning with the date the screening decision is either notified to the applicant or deemed to have been taken under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(7) or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(7) (see note 12), the screening decision ceases to have effect: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 8(9); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 7(9).

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#### **640. Significant projects requiring consent of Natural England or Welsh Ministers.**

A person must not begin or carry out a significant project<sup>1</sup> unless he has first obtained consent from Natural England or, as the case may be, the Welsh Ministers<sup>2</sup>, and in order to obtain consent an 'environmental statement' (that is, a statement containing the information necessary for assessing the environmental effects of the proposed project) must be included in the application<sup>3</sup>. If the project may affect another EEA state<sup>4</sup>, Natural England or, as the case may be, the Welsh Ministers must inform that state of the application and invite it to participate in the screening procedure<sup>5</sup>.

After considering the environmental statement<sup>6</sup>, any additional environmental information<sup>7</sup>, any representations received pursuant to the consultation process<sup>8</sup> and any social or economic

impacts which might result from a decision to refuse consent for the project<sup>9</sup>, Natural England or, as the case may be, the Welsh Ministers may, subject to compliance with the statutory provisions as to the conservation of habitats<sup>10</sup>, grant, or refuse to grant, consent<sup>11</sup>. Consents may be conditional<sup>12</sup>.

1 See PARA 639. As to the meaning of 'project' see PARA 638 note 1; and as to the meaning of 'significant project' see PARA 639 note 10.

2 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 9; Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 8. As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523. As to the Welsh Ministers see PARA 643. Any person who begins or carries out an uncultivated land project or a restructuring project in breach of the requirement for consent is guilty of an offence, and may be served with a stop notice or a remediation notice: see PARA 641.

3 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 12(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 11(1). An 'environmental statement' is a statement that includes as much of the information in the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, Sch 3 Pt 1 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, Sch 3 Pt 1 (as the case may be) as is reasonably required to assess the environmental effects of the project and which the applicant for consent can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, and which includes at least the information referred to in the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, Sch 3 Pt 2 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, Sch 3 Pt 2 (as the case may be): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1). After receiving a screening decision that a project is a significant project, but before applying for consent for the project from Natural England or the Welsh Ministers, the applicant may ask Natural England or the Welsh Ministers to give its or their opinion on what information should be provided in the environmental statement (known as a 'scoping opinion'): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 10(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 9(1). As to consultation and the giving of the opinion see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 10(2)-(4), 11; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 9(2)-(4), 10. As to the meaning of 'screening decision' see PARA 639 note 6. As to the administration of the consent application see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 12(2)-(6), 13; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 11(2), (3), 12. It is an offence to procure a decision on an application by making false representations: see PARA 641.

4 'EEA state' means a member state, Norway, Iceland or Liechtenstein: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 2(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 2(1).

5 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 14; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 13. For the procedure where a significant project in another member state may affect England see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 15; and for the procedure where a significant project in another member state may affect Wales see the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 14. Special provision is also made for transborder projects (ie projects where the relevant land is situated partly in England and partly in Wales or partly in England or Wales and partly in Scotland): see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 20; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 19.

6 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 16(1), (2)(a); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 15(1)(a).

7 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 16(2)(b); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 15(1)(b).

8 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 16(2)(c); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 15(1)(c).

9 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 16(2)(d); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 15(1)(d).

10 *Ie the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, regs 39, 41, 43, 44 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 739 et seq): see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 17; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 16.*

11 As to the procedure following a consent decision see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 19; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 18. A consent decision may be reviewed if the site subsequently becomes a European site: see the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 21(b), Sch 4; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 20(b), Sch 4. As to the meaning of 'European site' see PARA 638 note 6. There is a right of appeal against a refusal of consent and a right to apply to the High Court against a decision to grant consent: see PARA 642.

12 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 18; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 17. It is an offence to carry out work in contravention of a condition of a consent: see PARA 641. There is a right of appeal against a conditional consent: see PARA 642.

## UPDATE

### **640 Significant projects requiring consent of Natural England or Welsh Ministers**

NOTE 11--SI 2006/2522 Sch 4 amended: SI 2009/1307.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/3. USE AND IMPROVEMENT OF LAND/ (2) RESTRUCTURING OF HOLDINGS AND USE OF UNCULTIVATED LAND/641. Punishment and enforcement where procedures not complied with.

### **641. Punishment and enforcement where procedures not complied with.**

Any person who begins or carries out an uncultivated land project<sup>1</sup> or a restructuring project<sup>2</sup> in breach of the requirement for a screening decision<sup>3</sup> or the requirement for consent<sup>4</sup> is guilty of an offence<sup>5</sup>, and may be served with a stop notice<sup>6</sup> or a remediation notice<sup>7</sup>, contravention of which is also an offence<sup>8</sup>. It is also an offence to carry out work in contravention of a condition of a consent<sup>9</sup> or to procure a decision on an application by making false representations<sup>10</sup>. There are powers of entry and powers to act in default of any notices issued pursuant to these provisions<sup>11</sup>, and provisions as to the time limits within which proceedings must be brought<sup>12</sup>.

1 As to the meanings of 'project', 'uncultivated land project' and (in England) 'uncultivated land' see PARA 638 notes 1, 3.

2 As to the meaning of 'restructuring project' see PARA 639 note 2.

3 *Ie in breach of the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 4 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 4 (see PARA 639). As to the meaning of 'screening decision' see PARA 639 note 6.*

4 *Ie in breach of the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 9 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 8 (see PARA 640).*

5 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 22; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg

21. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 22(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 21(1). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 Sch 1 (definition added by the Criminal Justice Act 1988 Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

6 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 25; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 24. Stop notices are served by Natural England or, where applicable, the Welsh Ministers: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 25(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 24(1). As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523. As to the Welsh Ministers see PARA 643. There is a right of appeal against the service of a stop notice: see PARA 642.

7 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 27; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 26. Remediation notices are served by Natural England or, where applicable, the Welsh Ministers: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 27(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 26(1). There is a right of appeal against the service of a remediation notice: see PARA 642.

8 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 26, 28; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 25, 27. A person guilty of contravening a stop notice is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 26(4); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 25(4)); and a person guilty of contravening a remediation notice is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, if the failure is continued after conviction, to a further fine not exceeding £100 for every day the failure continues (Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 28; Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 27). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 Sch 1 (definition added by the Criminal Justice Act 1988 Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

9 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 23; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 22. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 23; Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 22.

10 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 24; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 23. A person guilty of this offence is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 24(2); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 23(2).

11 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 30; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 29.

12 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 29; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 28.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/3. USE AND IMPROVEMENT OF LAND/ (2) RESTRUCTURING OF HOLDINGS AND USE OF UNCULTIVATED LAND/642. Appeals generally in connection with environmental impact assessments.

#### **642. Appeals generally in connection with environmental impact assessments.**

A person may appeal to the Secretary of State or, as the case may be, the Welsh Ministers<sup>1</sup> against a stop notice<sup>2</sup> or a remediation notice<sup>3</sup>, and a person may appeal to the Secretary of State against a screening notice<sup>4</sup>, on the grounds that Natural England<sup>5</sup> or (as the case may be) the Welsh Ministers did not have power to serve the notice or include a particular requirement in it, that there has been some material irregularity, defect or error in, or in connection with, the notice, or that any of the requirements of the notice are unreasonable<sup>6</sup>. On appeal the Secretary of State or the Welsh Ministers may affirm, vary or revoke the notice<sup>7</sup>.

Applicants for screening decisions<sup>8</sup> in respect of significant projects<sup>9</sup>, and applicants for consent for significant projects whose applications have either been refused or granted conditionally<sup>10</sup>, may appeal against those decisions to the Secretary of State or the Welsh Ministers<sup>11</sup>. The Secretary of State and the Welsh Ministers may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as if he or they were making a decision on the matter in question for the first time<sup>12</sup>.

Provision is made for the administration of appeals against notices and decisions<sup>13</sup>, which may be determined either by written representation<sup>14</sup> or by a hearing or local inquiry<sup>15</sup>.

A person aggrieved by a decision of Natural England or the Welsh Ministers that a project is not a significant project or by a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision<sup>16</sup>, and the court may quash the decision if it is satisfied that the decision was not lawfully made<sup>17</sup> or the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any relevant statutory requirement<sup>18</sup>. Provision is made for the administration of such applications<sup>19</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the issue of stop notices see PARA 641.

3 As to the issue of remediation notices see PARA 641.

4 As to the meaning of 'screening notice' see PARA 639 note 5.

5 As to Natural England see the Natural Environment and Rural Communities Act 2006 Pt 1 Ch 1 (ss 1-16); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

6 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 31(1)(a)-(c), (2); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 30(1)(a), (b), (2). An appeal also lies against a notice under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, Sch 4 para 5 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, Sch 4 para 5 (see PARAS 639-640): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 31(1)(d); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 30(1)(c).

7 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 31(7)(a); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 30(6)(a).

8 As to the meaning of 'screening decision' see PARA 639 note 6.

9 As to the meaning of 'significant project' see PARA 639 note 10.

10 As to the granting of applications and the imposition of conditions see PARA 640.

11 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 32(1), (2)(a), (b); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 31(1), (2)(a), (b). An appeal also lies against a notification of a further decision under the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, Sch 4 para 3 or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, Sch 4 para 3 (see PARAS 639-640): Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 32(2)(c); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 31(2)(c).

12 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 32(10); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 31(8).

13 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, regs 31(3)-(6), (7)(b), (8)-(11), 32(3)-(9), (11)-(16), 36; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, regs 30(3)-(5), (6)(b), (7)-(10), 31(3)-(7), (9)-(14), 35.

14 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 33; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 32.

15 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 34; and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 33.

16 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 35(1); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 34(1).

17 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 35(2)(a); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 34(2)(a).

18 Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 35(2)(b); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 34(2)(b). 'Any relevant statutory requirement' means any requirement of the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, or the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933: Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 35(2)(b); Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 34(2)(b).

19 See the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006, SI 2006/2522, reg 35(3), (4); and the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933, reg 34(3), (4).

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/643. Ministerial powers and functions in respect of agricultural land.

## **4. ADMINISTRATION AND AUTHORITIES**

### **(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS**

#### **643. Ministerial powers and functions in respect of agricultural land.**

Powers and functions in respect of agricultural land in England and Wales (including smallholdings, allotments and, to the extent that they still exist, cottage holdings) are exercised primarily by the Secretary of State for Environment, Food and Rural Affairs<sup>1</sup> or, in Wales, by the Welsh Ministers<sup>2</sup>, as the successors to the Minister of Agriculture, Fisheries and Food<sup>3</sup> (and, in particular instances mainly involving smallholdings and allotments, the Minister of Health, the Local Government Board, the Minister of Housing and Local Government, the Secretary of State for Wales, the Secretary of State for the Environment, the Secretary of State for the Environment, Transport and the Regions, and the Inclosure Commissioners<sup>4</sup>) to whom powers and functions under the legislation relating to agricultural land were formerly assigned.



In discharging any functions connected with agriculture<sup>5</sup> in relation to any land the Secretary of State and the Welsh Ministers must, so far as is consistent with the proper and efficient discharge of those functions, have regard to and endeavour to achieve a reasonable balance between:

- 292 (1) the promotion and maintenance of a stable and efficient agricultural industry<sup>6</sup>;
- 293 (2) the economic and social interests of rural areas<sup>7</sup>;
- 294 (3) the conservation and enhancement of the natural beauty and amenity<sup>8</sup> of the countryside (including its flora and fauna and geological and physiographical features) and of any features of archaeological interest there<sup>9</sup>; and
- 295 (4) the promotion of the enjoyment of the countryside by the public<sup>10</sup>.

1 The office of Secretary of State for Environment, Food and Rural Affairs was constituted by the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (amended by SI 2002/2626), which also made provision for the transfer to the Department for Environment, Food and Rural Affairs of the functions of the former Minister of Agriculture, Fisheries and Food relating to agriculture and food production (see note 3) and the functions of the former Department of the Environment, Transport and the Regions relating to the environment, rural development, countryside, wildlife and sustainable development. As to transfer of functions generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363.

In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 Sch 1; and **STATUTES** vol 44(1) (Reissue) PARA 1382. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. In practice, the agriculture functions of the Secretary of State are exercised by the Secretary of State for Environment, Food and Rural Affairs. As to government departments and ministerial responsibilities generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq.

The Secretary of State is also empowered to give or arrange for the giving of financial assistance in respect of expenditure incurred or to be incurred in any matter related to or connected with a function of the Department for Environment, Food and Rural Affairs (see the Natural Environment and Rural Communities Act 2006 s 98; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 521) and by agreement to delegate such functions to designated agricultural or conservation bodies in England (see Pt 8 Chapter 1 (ss 78-86); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 520).

2 Pursuant to the establishment of the Welsh Assembly Government under the Government of Wales Act 2006 Pt 2 (ss 45-92) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), statutory functions relating to agricultural land, including functions under subordinate legislation, so far as exercisable in relation to Wales are now almost exclusively the responsibility of Welsh Ministers (ie the First Minister and the Welsh Ministers established under ss 46, 48: see s 45(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), having previously been transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1; the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253; and the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044) or having been conferred by virtue of particular provision made under enactments subsequent to the Government of Wales Act 1998: see the Government of Wales Act 2006 Sch 11 para 30; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Further transfers of ministerial functions to the Welsh Ministers may be effected by Order in Council pursuant to Sch 3 paras 1-8. For provisions as to the exercise of the transferred functions see Sch 11 paras 33-35 (in the case of functions originally transferred to the Assembly by Order in Council under the Government of Wales Act 1998 s 22) or the Government of Wales Act 2006 Sch 3 para 9 (in the case of functions subsequently transferred to the Welsh Ministers by Order in Council under Sch 3 paras 1-8); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

By virtue of these transfers functions under the following enactments (to the extent that they are recorded in this title) are conferred on the Welsh Ministers in so far as they are exercisable in relation to Wales, subject (where applicable) to the limitations noted:

- 84 (1) the Improvement of Land Act 1864 (in respect of the functions transferred to the Secretary of State for Wales by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272 (the '1978 transfer order'));
- 85 (2) the Limited Owners Residences Act 1870;
- 86 (3) the District Councils (Water Supply Facilities) Act 1897;

- 87 (4) the Improvement of Land Act 1899;
- 88 (5) the Small Holdings and Allotments Act 1908;
- 89 (6) the Land Settlement (Facilities) Act 1919 (excluding the power of the former Local Government Board to make regulations under Sch 1 para 10);
- 90 (7) the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197;
- 91 (8) the Allotments Act 1922 (other than s 1(4));
- 92 (9) the Agricultural Credits Act 1923;
- 93 (10) the Allotments Act 1925;
- 94 (11) the Small Holdings and Allotments Act 1926;
- 95 (12) the Agricultural Land (Utilisation) Act 1931;
- 96 (13) the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196;
- 97 (14) the Hill Farming Act 1946;
- 98 (15) the Agriculture Act 1947 (except functions under s 75);
- 99 (16) the Agriculture Act 1967 (to the extent transferred to the Secretary of State for Wales by the Transfer of Functions (Wales) Order, SI 1969/388 (revoked) (the '1969 transfer order') and the 1978 transfer order, and subject to the following: that the Treasury approval requirements under s 53, Sch 5 Pt II continue in effect; and that it is directed that the notification functions of the 'appropriate Minister' under s 54(3) are exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom they are exercisable);
- 100 (17) the Agriculture Act 1970 (except s 53, and subject to another proviso not relevant to this title: note also that s 62, which made provision for the exercise by the Secretary of State for Wales of certain ministerial functions under that Act relating to Wales, may be considered spent);
- 101 (18) the Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049;
- 102 (19) the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050;
- 103 (20) the Smallholdings (Contributions Towards Losses) Regulations 1970, SI 1970/1051;
- 104 (21) the Land Compensation Act 1973;
- 105 (22) the Agricultural Land Tribunals (Rules) Order 2007, SI 2007/3105;
- 106 (23) the Acquisition of Land Act 1981 s 19;
- 107 (24) the Agricultural Holdings Act 1986 (except Sch 12 para 4(1)(a));
- 108 (25) the Agriculture Act 1986 (subject to an exclusion not relevant to this title); and
- 109 (26) the Town and Country Planning Act 1990 s 229.

The 1969 transfer order provided that the functions of the Minister of Agriculture, Fisheries and Food under the Agriculture Act 1967 ss 49(5), 50(2), 62 were transferred to the Secretary of State for Wales to the extent specified in, and subject to the specific provisions of, the order (see the Transfer of Functions (Wales) Order, SI 1969/388, art 3, Sch 2 para 1 (revoked)). The 1978 transfer order provided that the functions of the Minister of Agriculture, Fisheries and Food under the Improvement of Land Acts 1864 and 1899 were, so far as they were exercisable in relation to Wales, transferred to the Secretary of State for Wales (Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272, art 2(1), Sch 1), subject to the following:

- 110 (a) that the functions of the Minister of Agriculture, Fisheries and Food which were exercisable by him jointly with a Secretary of State in relation to Wales or to England and Wales (but not in relation to any other part of the United Kingdom) were transferred either to the Secretary of State for Wales (so far as they were exercisable in relation to Wales) or to the Minister of Agriculture, Fisheries and Food (so far as they were exercisable in relation to England) (art 2(2));

- 111 (b) that those functions which were exercisable in relation to Great Britain or the United Kingdom by two or more ministers jointly were transferred to those ministers and the Secretary of State for Wales jointly (art 2(3)); and
- 112 (c) that those functions which were exercisable by the Minister of Agriculture, Fisheries and Food alone were, so far as they are exercisable in relation to areas partly in England and partly in Wales (but not comprising England and Wales in their entirety) or in relation to committees, boards or schemes for such areas, were transferred to that minister and the Secretary of State for Wales jointly (art 2(4)).

Note that the functions transferred to the Welsh Ministers pursuant to these provisions may by Order in Council be further transferred to the First Minister or the Counsel General or (other than the function of confirming or approving subordinate legislation) to the Assembly Commission or the Assembly: see the Government of Wales Act 2006 Sch 11 para 31; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the First Minister see s 46; as to the Counsel General see s 49; as to the Assembly Commission see s 27; as to the Assembly see s 1; and see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Provision is also made for the joint exercise of certain of the transferred functions: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 4.

3 The principal ministry to which statutory powers and functions under the legislation relating to agricultural land were formerly assigned was the Ministry of Agriculture, Fisheries and Food, whose ultimate predecessor was the Board of Agriculture established under the Board of Agriculture Act 1889 s 1 (repealed). The Board was renamed the Board of Agriculture and Fisheries by the Board of Agriculture and Fisheries Act 1903 s 1(1), before being reconstituted as the Ministry of Agriculture and Fisheries under the Ministry of Agriculture and Fisheries Act 1919 s 1(1), and then as the Ministry of Agriculture, Fisheries and Food under the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554. Functions of the Minister of Agriculture, Fisheries and Food under the Small Holdings and Allotments Act 1908, the Land Settlement (Facilities) Act 1919 (except certain functions under s 12, Sch 1 para 10: see note 2), the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, the Small Holdings and Allotments (Compulsory Hiring) Regulations 1936, SR & O 1936/196, the Allotments Act 1922, the Allotments Act 1925 (other than s 5), the Small Holdings and Allotments Act 1926, the Agricultural Land (Utilisation) Act 1931, the Agriculture Act 1947 and the Allotments Act 1950 were transferred to the Minister of Land and Natural Resources (Minister of Land and Natural Resources Order 1965, SI 1965/143), and then to the Minister of Housing and Local Government (in relation to England) or the Secretary of State for Wales (in relation to Wales) (Ministry of Land and Natural Resources (Dissolution) Order 1967, SI 1967/156). In relation to England, those functions were then transferred to the Secretary of State for the Environment by the Secretary of State for the Environment Order 1970, SI 1970/1681, and subsequently (along with functions under the Agriculture Act 1970, the Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, and the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, which had remained vested in the Minister of Agriculture, Fisheries and Food) to the Secretary of State for the Environment, Transport and the Regions by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971.

The Ministry of Agriculture, Fisheries and Food and the Ministry for the Environment, Transport and the Regions were dissolved, and their functions transferred to the Secretary of State for Environment, Food and Rural Affairs, by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794: see note 1. As to the transfers of functions in relation to Wales, see the text and note 2.

4 Functions under the Allotments Act 1925 s 5 were originally vested in the Ministry of Health established under the Ministry of Health Act 1919 s 3 (repealed), which also transferred to that Ministry certain functions under the Land Settlement (Facilities) Act 1919 s 12, Sch 1 para 10 originally vested in the Local Government Board. Functions of the Ministry of Health were transferred to the Minister of Local Government and Planning by the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No 2) Order 1951, SI 1951/753, and that Minister was restyled the Minister of Housing and Local Government by the Minister of Local Government and Planning (Change of Style and Title) Order 1951, SI 1951/1900. In relation to Wales, the functions of the Minister of Housing and Local Government under the Land Settlement (Facilities) Act 1919 s 12, Sch 1 para 10 and the Allotments Act 1925 s 5 were then transferred to the Secretary of State for Wales by the Secretary of State for Wales and Minister of Land and Natural Resources Order 1965, SI 1965/319. In relation to England, those functions were transferred to the Secretary of State for the Environment by the Secretary of State for the Environment Order 1970, SI 1970/1681, and subsequently to the Secretary of State for the Environment, Transport and the Regions by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, before vesting in the Secretary of State for the Environment, Food and Rural Affairs (see the text and note 3).

The functions of the Minister under the Agriculture Act 1970, the Smallholdings (Selection of Tenants) Regulations 1970, SI 1970/1049, and the Smallholdings (Full-Time Employment) Regulations 1970, SI 1970/1050, so far as exercisable in relation to Wales, including those exercisable by him jointly with the Secretary of State, were transferred to the Secretary of State by the Transfer of Functions (Wales) (No 1) Order 1978, SI 1978/272. As to the further transfers of functions in relation to Wales, see note 2.

The Inclosure Commissioners for England and Wales were established under the Inclosure Act 1845 s 2 (repealed) and the Inclosure Commissioners Act 1851 s 2 (repealed). They became the Land Commissioners for England (see the Settled Land Act 1882 s 48 (repealed)) and their functions later passed to the Board of Agriculture under the Board of Agriculture Act 1889 ss 2(1)(b), 11, Sch 1 Pt II (repealed so far as relevant). As to the subsequent renaming and transfer of the functions of the Board of Agriculture see note 3. Functions under the Inclosure Act 1845, the Commons Act 1876 and the Improvement Acts (see PARA 619 note 1) were originally vested in the Inclosure Commissioners.

5 As to the meanings of 'agriculture' and 'agricultural' see the Agriculture Act 1947 s 109(3); and PARA 324 (definition applied by the Agriculture Act 1986 s 17(2)).

6 Agriculture Act 1986 s 17(1)(a).

7 Agriculture Act 1986 s 17(1)(b).

8 As to the meaning of 'amenity' see *Re Ellis and Ruislip-Northwood UDC* [1920] 1 KB 343 at 370, CA; *Cartwright v Post Office* [1968] 2 All ER 646 at 648 (affd [1969] 2 QB 62, [1969] 1 All ER 421, CA). Note, however, that those cases were decided under planning legislation.

9 Agriculture Act 1986 s 17(1)(c).

10 Agriculture Act 1986 s 17(1)(d).

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/644. Acquisition and management of agricultural land by Secretary of State and Welsh Ministers.

### **644. Acquisition and management of agricultural land by Secretary of State and Welsh Ministers.**

The Secretary of State and the Welsh Ministers<sup>1</sup> have power to acquire by agreement<sup>2</sup>:

- 296 (1) any land used for agriculture<sup>3</sup>;
- 297 (2) any other agricultural land<sup>4</sup>;
- 298 (3) where any such land is offered to the Secretary of State or the Welsh Ministers for acquisition on the condition that he or they also acquire other land not falling within the above categories, that other land<sup>5</sup>; and

299 (4) any land as respects which compulsory purchase powers are by the Agriculture Act 1947 vested in the Secretary of State or the Welsh Ministers<sup>6</sup>.

The general powers of the Secretary of State and the Welsh Ministers to acquire and manage land<sup>7</sup> include power to acquire, hold or dispose of land for the purpose of effecting amalgamations<sup>8</sup> of agricultural land and reshaping of agricultural units<sup>9</sup>, and for those purposes to enter into transactions involving loss<sup>10</sup>. The Secretary of State and the Welsh Ministers also have power to acquire by agreement any land which in their opinion is required for the purposes of smallholdings<sup>11</sup>. Certain authorities may enter into management arrangements with persons having interests in land which may, inter alia, restrict agricultural operations on the land<sup>12</sup>.

Land acquired by the Secretary of State and the Welsh Ministers may be managed, farmed, sold, let or otherwise disposed of by them either in such manner as they consider expedient for the purpose for which the land was acquired<sup>13</sup> or, if they are satisfied that the land ought to be devoted to some other purpose, then in such manner as they consider expedient for that purpose<sup>14</sup>. The powers of the Secretary of State and the Welsh Ministers are subject to any statutory restriction, and no such land may be sold unless, having regard to the use proposed for the land, it appears to the Secretary of State or the Welsh Ministers expedient that it should be sold<sup>15</sup>. In managing the land the Secretary of State and the Welsh Ministers may provide for the welfare of tenants or others employed in agriculture on the land<sup>16</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 When in pursuance of the powers conferred by the Agriculture Act 1947 s 82 (see the text and notes 3-6) the Secretary of State or the Welsh Ministers purchase land in pursuance of the powers under the Ecclesiastical Leasing Acts, the consent of the patron is not required: s 82(2). The 'Ecclesiastical Leasing Acts' are the Ecclesiastical Leasing Acts 1842 and 1858 (which, by the Endowments and Glebe Measure 1976 s 47(3), Sch 7, no longer apply to incumbents). As to the provisions of the Ecclesiastical Leasing Act 1858 s 1 regarding sales with the consent of the patron see **ECCLESIASTICAL LAW** vol 14 PARAS 1156, 1158.

3 Agriculture Act 1947 s 82(1)(a). As to the meaning of 'agriculture' see PARA 324.

4 Agriculture Act 1947 s 82(1)(b). As to the meaning of 'agricultural land' see PARA 324.

5 Agriculture Act 1947 s 82(1)(c).

6 Agriculture Act 1947 s 82(1)(d). As to the compulsory acquisition of agricultural land generally see PARAS 606-612.

7 As to the powers of the Secretary of State and the Welsh Ministers under the Agriculture Act 1947 ss 82, 90 (see the text and notes 1-6, 8-16).

8 As to amalgamations see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338 et seq.

9 As to the meaning of 'agricultural unit' see PARA 324 note 7.

10 See the Agriculture Act 1967 s 29(1), (2); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1342.

11 See the Agriculture Act 1970 s 55; and PARA 490.

12 See the Wildlife and Countryside Act 1981 s 39; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 763.

13 Agriculture Act 1947 s 90(1)(a).

14 Agriculture Act 1947 s 90(1)(b).

15 Agriculture Act 1947 s 90(1) proviso.

16 Agriculture Act 1947 s 90(2).

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/645. Powers of entry and inspection for purposes of acquisition and management available to Secretary of State and Welsh Ministers.

### **645. Powers of entry and inspection for purposes of acquisition and management available to Secretary of State and Welsh Ministers.**

For the purpose of determining whether the powers to acquire and manage land conferred by the Agriculture Act 1947<sup>1</sup> are to be exercised in relation to land, or whether any direction given under any such power has been complied with, any person authorised by the Secretary of State or the Welsh Ministers<sup>2</sup> has power at all reasonable times to enter on and inspect any land<sup>3</sup>. In the case of land which the Secretary of State or the Welsh Ministers may consider acquiring<sup>4</sup>, or which is used for residential purposes, 24 hours' notice must be given to the occupier<sup>5</sup>. In all other cases notice must be given to the occupier that it is proposed to enter during a specified period, not exceeding 14 days and beginning at least 24 hours after the giving of the notice, and the entry must take place during that period<sup>6</sup>. The authorised person may be required to produce documentary proof of his authority<sup>7</sup>. Any person who obstructs the exercise of these powers is guilty of an offence<sup>8</sup>.

1 The powers relevant to this title are the powers under the Agriculture Act 1947 ss 82, 90 (see PARA 644).

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 Agriculture Act 1947 s 106(1).

4 The only extant powers of acquisition to which these provisions apply are those in the Agriculture Act 1947 s 82 (see PARA 644).

5 Agriculture Act 1947 s 106(3). For these purposes, 'occupier' in relation to unoccupied land means the person entitled to occupy it: Pests Act 1954 s 1(13).

6 Agriculture Act 1947 s 106(4) (amended by the Agriculture Act 1958 Sch 2 Pt I). Any notice or other document required or authorised by or under the Agriculture Act 1947 to be given to or served on any person is duly given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter, and any such document required or authorised to be given to or served on an incorporated company or

body is duly given or served if given to or served on the secretary or clerk of the company or body: s 107(1), (2). For these purposes the proper address of any person to or on whom any such document is to be given or served is, in the case of the secretary or clerk of any incorporated company or body, that of the registered or principal office of the company or body, and in any other case is the last known address of the person in question: s 107(3). Where any document is to be given to or served on a person as being the person having any interest in land, and it is not practicable after reasonable inquiry to ascertain his name or address, the document may be given or served by addressing it to him by the description of the person having that interest in the land (naming it), and delivering the document to some responsible person on the land or by affixing it, or a copy of it, to some conspicuous object on the land: s 107(4). Where any such document or notice is to be given or served on any person as being the owner of the land and the land is vested in the incumbent of a benefice of the Church of England, a copy must be served on the Diocesan Board of Finance for the diocese in which the land is situated (s 107(5) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 s 14, Sch 5 para 2)).

7 Agriculture Act 1947 s 106(2) (amended by the Agriculture Act 1970 Sch 5 Pt III).

8 Agriculture Act 1947 s 106(7) (amended by the Pests Act 1954 s 5(1)). The penalty on summary conviction is a fine not exceeding level 2 on the standard scale: Agriculture Act 1947 s 106(7) (amended by virtue of the Criminal Justice Act 1982 ss 35, 46). As to the standard scale see PARA 641 note 5.

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/646. Powers of Secretary of State and Welsh Ministers concerning smallholdings land.

### **646. Powers of Secretary of State and Welsh Ministers concerning smallholdings land.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may designate any land vested in them as being land held for the purposes of smallholdings<sup>2</sup>, and may at any time revoke such a designation<sup>3</sup>. In relation to land held by them for the purposes of smallholdings, the Secretary of State and the Welsh Ministers have powers and duties with regard to the letting, equipping and managing of smallholdings, and the letting of surplus land, corresponding to those of smallholdings authorities<sup>4</sup>.

The Secretary of State and the Welsh Ministers also have power to:

300 (1) approve reorganisation proposals<sup>5</sup>;

- 301 (2) acquire smallholdings land<sup>6</sup>;
- 302 (3) make regulations for any purpose for which regulations are authorised or required to be made relating to smallholdings<sup>7</sup>;
- 303 (4) exercise control over the selection of tenants by making regulations<sup>8</sup>;
- 304 (5) make loans in respect of smallholdings<sup>9</sup>;
- 305 (6) increase the amount of certain capital grants<sup>10</sup>;
- 306 (7) act in default of smallholdings authorities<sup>11</sup>,

and must make an annual report<sup>12</sup>.

- 1 As to the Secretary of State and the Welsh Ministers see PARA 643.
- 2 As to the meaning of 'smallholding' and the purposes of smallholdings see PARA 488.
- 3 See the Agriculture Act 1970 s 54(7); and PARA 490.
- 4 Agriculture Act 1970 s 54(1), (2). As to these powers and duties see ss 44-47, 49(1), (2); and PARAS 491-492, 496, 497, 506, 652. As to smallholdings authorities see PARAS 650-653.
- 5 See the Agriculture Act 1970 ss 41-43; and PARA 501 et seq.
- 6 See the Agriculture Act 1970 s 55; and PARA 490.
- 7 Agriculture Act 1970 s 63.
- 8 See the Agriculture Act 1970 s 44(6); and PARA 496.
- 9 See the Agriculture Act 1970 s 54(5), (6); and PARA 508.
- 10 See the Agriculture Act 1970 s 51; and PARA 509.
- 11 See the Agriculture Act 1970 s 56; and PARA 647.
- 12 Agriculture Act 1970 s 59(2).

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.



MINISTERS/647. Default powers of Secretary of State and Welsh Ministers over smallholdings authorities.

**647. Default powers of Secretary of State and Welsh Ministers over smallholdings authorities.**

Where the Secretary of State or the Welsh Ministers<sup>1</sup> is or are satisfied that a smallholdings authority<sup>2</sup> is not satisfactorily exercising its functions<sup>3</sup> they may:

- 307 (1) direct the authority to exercise its functions in such manner as is specified in the direction<sup>4</sup>; or
- 308 (2) by order transfer all or any of its functions to the Secretary of State or the Welsh Ministers<sup>5</sup>.

Where any functions of a smallholdings authority have been transferred to the Secretary of State or the Welsh Ministers<sup>6</sup>, and any property has been acquired or any liabilities have been incurred in the performance of those functions while so transferred, any order varying or revoking that order<sup>7</sup> may contain such provisions with respect to the transfer, vesting or discharge of any such property or liabilities as appear to the Secretary of State or the Welsh Ministers to be expedient in the circumstances<sup>8</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to smallholdings authorities see PARAS 650-653.

3 As to the meaning of 'functions' see PARA 502 note 11.

4 Agriculture Act 1970 s 56(1)(a). This power is without prejudice to any other power to give directions under Pt III (ss 37-65): s 56(6).

5 Agriculture Act 1970 s 56(1)(b), (2). Before the Secretary of State or the Welsh Ministers make an order under s 56(1)(b) they must give the authority an opportunity of making representations, which they must consider, and if the authority so requires must afford it the opportunity of being heard by a person appointed for the purpose: s 56(3)(a).

The performance by the Secretary of State or the Welsh Ministers of functions so transferred has effect as if the Secretary of State or the Welsh Ministers were the authority's duly authorised agent, except that any expenses incurred by the Secretary of State or the Welsh Ministers in the performance of those functions must be defrayed in the first instance by them: s 56(4)(a). The Secretary of State or the Welsh Ministers must certify, in respect of such successive periods as they may determine, the amount of the expenses so incurred in each such period and the amount of any receipts in each such period from the performance of those functions, and the difference between those amounts, as certified by the Secretary of State or the Welsh Ministers, is recoverable by them from the smallholdings authority or payable by them to the authority, as the case may require: s 56(4)(b).

6 ie by an order in accordance with the Agriculture Act 1970 s 56(1)(b) (see note 5).

7 Power to make such an order may be inferred from the Agriculture Act 1970 s 56(5); the Act contains no such explicit power.

8 Agriculture Act 1970 s 56(5). Before coming to a decision on an application by a smallholdings authority to revoke an order transferring its functions, being an application made not earlier than 12 months after the making of the order or of any previous application, the Secretary of State or the Welsh Ministers must give the authority an opportunity of making representations to them, which they must consider, and if the authority so requires must afford it the opportunity of being heard by a person appointed for the purpose: s 56(3)(b).

**UPDATE**

**643-654 Ministerial powers and functions in respect of agricultural land ...  
Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

**643-653 Ministerial powers and functions in respect of agricultural land ...  
Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/648. Powers of Secretary of State and Welsh Ministers concerning allotments land.

**648. Powers of Secretary of State and Welsh Ministers concerning allotments land.**

The Secretary of State and the Welsh Ministers<sup>1</sup> may, on the application of the trustees, or other persons interested, authorise the exchange of allotments held for the benefit of poor inhabitants, or for any other public or parochial purpose, for other more suitable lands<sup>2</sup>. A fuel allotment<sup>3</sup>, notwithstanding the restriction on user otherwise than in accordance with the Act or award under which it was set out, may in certain circumstances be otherwise used<sup>4</sup> and may be the subject of compulsory acquisition and appropriation in the same way as field garden allotments<sup>5</sup>. The Secretary of State and the Welsh Ministers may also authorise a local authority to purchase land compulsorily for allotments<sup>6</sup> and may make grants to allotment societies<sup>7</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 See the Inclosure Act 1845 s 149; PARA 556; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 551.

3 As to the meaning of 'fuel or field garden allotment' see PARA 588 note 10.

4 See the Town and Country Planning Act 1990 s 241(1); PARA 556; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 962.

5 See the Town and Country Planning Act 1990 ss 226(3), (8), 229(1)-(3); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 934, 947.

6 See the Small Holdings and Allotments Act 1908 s 39(1); and PARA 531.

7 See the Small Holdings and Allotments Act 1908 s 49(4); and PARA 657.

**UPDATE**

**643-654 Ministerial powers and functions in respect of agricultural land ...  
Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

**643-653 Ministerial powers and functions in respect of agricultural land ...  
Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(1) THE SECRETARY OF STATE AND THE WELSH MINISTERS/649. Inquiries by Secretary of State and Welsh Ministers concerning allotments.

**649. Inquiries by Secretary of State and Welsh Ministers concerning allotments.**

The Secretary of State and the Welsh Ministers<sup>1</sup>, and their officers, have the same powers for the purposes of an inquiry under the Allotments Acts<sup>2</sup> as they have for the purposes of an inquiry under the Public Health Acts<sup>3</sup>. Notices of the inquiries must be given and published in accordance with such general or special directions as the Secretary of State or the Welsh Ministers may give<sup>4</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 Ie the Allotments Acts 1908 to 1950: see PARA 510 note 2.

3 Small Holdings and Allotments Act 1908 s 57(1) (amended by the Small Holdings and Allotments Act 1926 Sch 2). As to the Public Health Acts see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 1-2.

4 Small Holdings and Allotments Act 1908 s 57(2).

**UPDATE**

**643-654 Ministerial powers and functions in respect of agricultural land ...  
Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

**643-653 Ministerial powers and functions in respect of agricultural land ...  
Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (2) SMALLHOLDINGS AUTHORITIES/650. Designation and aim of smallholdings authorities.

## **(2) SMALLHOLDINGS AUTHORITIES**

### **650. Designation and aim of smallholdings authorities.**

County councils in England, and county or county borough councils in Wales, are the smallholdings authorities<sup>1</sup>. Smallholdings authorities must make it their general aim, having regard to the general interests of agriculture<sup>2</sup> and of good estate management<sup>3</sup>, to provide opportunities for persons to be farmers on their own account by letting holdings limited in size so as to provide full-time employment for not more than the occupier and one other person, to persons satisfying certain requirements<sup>4</sup>.

1 Agriculture Act 1970 s 38(b), (bb) (s 38(b) amended, s 38(bb) added, by the Local Government (Wales) Act 1994 Sch 16 para 38(1), Sch 18). As to the English counties and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq; as to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the meaning of 'smallholding' see PARA 488.

2 As to the meaning of 'agriculture' see PARA 324.

3 As to the principles of good estate management see PARA 345; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 902, 904.

4 Agriculture Act 1970 ss 39(1), (2), 41(4); see further PARAS 494-496.

### **UPDATE**

#### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

#### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (2) SMALLHOLDINGS AUTHORITIES/651. Records and plans of smallholdings.

### **651. Records and plans of smallholdings.**

Every smallholdings authority<sup>1</sup> must compile and keep, and, if so required by a person authorised by the Secretary of State or the Welsh Ministers<sup>2</sup>, as the case may be, must produce to him a record of all land which is or has at any time been held by the authority for the purposes of smallholdings<sup>3</sup>, of the occupiers<sup>4</sup> of such of the land as is let by it as smallholdings

and of the rents, and of the purchasers of so much of the land as it has sold<sup>5</sup>, and a map or plan showing the size, boundaries and situation of each smallholding it provides<sup>6</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 As to the meaning of 'smallholding' and the purposes of smallholdings see PARA 488.

4 As to the 'occupier of land' for these purposes see PARA 324 note 7.

5 Agriculture Act 1970 s 58(2)(a).

6 Agriculture Act 1970 s 58(2)(b). As to the meaning of 'smallholding provided by a smallholdings authority' see PARA 507 note 3.

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (2) SMALLHOLDINGS AUTHORITIES/652. Promotion of smallholdings societies.

## **652. Promotion of smallholdings societies.**

A smallholdings authority<sup>1</sup> may, for the benefit of the occupiers<sup>2</sup> of smallholdings provided by them, further the formation of smallholdings societies and assist their carrying on and the extension of their activities<sup>3</sup>. Smallholdings societies<sup>4</sup> are bodies of persons, whether corporate or unincorporate, having for their object or one of their objects the promotion of efficiency in the conduct of smallholdings through co-operative methods, and in particular through the co-operative purchase and hiring of requisites or the co-operative sale, marketing or preparation for marketing of produce<sup>5</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the 'occupier of land' for these purposes see PARA 324 note 7.

3 Agriculture Act 1970 s 47(2). As to the meaning of 'smallholding provided by a smallholdings authority' see PARA 507 note 3. As to the meaning of 'smallholding' see PARA 488. Note that these powers are also exercisable

by the Secretary of State and the Welsh Ministers: see s 54(1), (2); and PARA 646. As to the Secretary of State and the Welsh Ministers see PARA 643.

4 The term 'smallholdings society' is not a statutory term.

5 Agriculture Act 1970 ss 47(2). 'Produce' includes anything, whether live or dead, produced in the course of agriculture: Agriculture Act 1947 s 109(3); Agriculture Act 1970 s 37(4).

## UPDATE

### **643-654 Ministerial powers and functions in respect of agricultural land ... Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

### **643-653 Ministerial powers and functions in respect of agricultural land ... Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (2) SMALLHOLDINGS AUTHORITIES/653. Public accountability in relation to smallholdings.

### **653. Public accountability in relation to smallholdings.**

Every smallholdings authority<sup>1</sup> must, before such date each year as the Secretary of State or the Welsh Ministers<sup>2</sup> direct, send to them a report, relating to such matters as they direct, of its proceedings during the previous financial year<sup>3</sup>. There must then be laid before Parliament or the National Assembly for Wales, in each financial year, a report summarising the annual reports so submitted by the smallholdings authorities and of the Secretary of State's or the Welsh Ministers' own proceedings in relation to smallholdings<sup>4</sup>.

A smallholdings authority must keep a separate account of its receipts and expenses, including capital receipts and expenses, with respect to smallholdings<sup>5</sup>.

1 As to smallholdings authorities see PARAS 650-653.

2 As to the Secretary of State and the Welsh Ministers see PARA 643.

3 Agriculture Act 1970 s 59(1).

4 Agriculture Act 1970 s 59(2). As to the meaning of 'smallholding' see PARA 488.

5 Agriculture Act 1970 s 58(1).

## UPDATE

**643-654 Ministerial powers and functions in respect of agricultural land ...  
Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

**643-653 Ministerial powers and functions in respect of agricultural land ...  
Public accountability in relation to smallholdings**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (3) ALLOTMENTS AUTHORITIES/654. Designation of allotments authorities.

**(3) ALLOTMENTS AUTHORITIES**

**654. Designation of allotments authorities.**

The local authorities primarily responsible for the provision and management of allotments are the councils of London boroughs, districts, and parishes, and, in Wales, counties, county boroughs and communities<sup>1</sup>, although inner London boroughs are not obliged to provide allotments<sup>2</sup>. In the case of parishes not having parish councils the authority responsible is the parish meeting<sup>3</sup>.

1 See PARA 520.

2 See the London Government Act 1963 s 55(4)(a), which operates so as to modify the Small Holdings and Allotments Act 1908 s 23 (duty of councils to provide allotments: see PARA 520) in respect of inner London boroughs.

3 See the Small Holdings and Allotments Act 1908 s 61(4); and PARA 520.

**UPDATE**

**643-654 Ministerial powers and functions in respect of agricultural land ...  
Designation of allotments authorities**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (3) ALLOTMENTS AUTHORITIES/655. Powers of entry of allotments authorities to ascertain suitability of land.

### **655. Powers of entry of allotments authorities to ascertain suitability of land.**

Allotments authorities<sup>1</sup> may, with a view to ascertaining whether any land is suitable for any purpose for which it has power to acquire land<sup>2</sup>, authorise in writing<sup>3</sup> any person to enter and inspect the land specified, and anyone who obstructs or impedes any person acting under and in accordance with such authority commits an offence<sup>4</sup>.

1 As to the allotments authorities see PARA 654. The Land Settlement (Facilities) Act 1919 s 19 refers initially only to 'a council', but in view of the subsequent reference to the powers to acquire land under the Small Holdings and Allotments Act 1908 (see the text and note 2) it is clear that this should be construed as a reference to the councils empowered to acquire land for the purposes of that Act, that is to say, the councils referred to in PARA 654: see PARA 520 notes 1-5.

2 Under the Small Holdings and Allotments Act 1908 (the 'principal Act', by virtue of the Land Settlement (Facilities) Act 1919 s 1 (repealed)).

3 A person exercising a power of entry and inspection under the Land Settlement (Facilities) Act 1919 s 19 may be required to produce his authority.

4 Land Settlement (Facilities) Act 1919 s 19 (amended by virtue of the Criminal Justice Act 1982 s 46). The offence is punishable on summary conviction by a fine not exceeding level 2 on the standard scale: Land Settlement (Facilities) Act 1919 s 19 (as so amended). As to the standard scale see PARA 641 note 5.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (3) ALLOTMENTS AUTHORITIES/656. Power of allotments authorities to appoint and remove allotment managers.

### **656. Power of allotments authorities to appoint and remove allotment managers.**

Allotments authorities<sup>1</sup> may appoint and remove managers of land acquired by them for allotments<sup>2</sup>. These managers must consist either partly of council members and partly of other persons who are residents and are liable to pay to the council in whose area the land is situated an amount in respect of council tax, or wholly of such other persons<sup>3</sup>, with such powers, including the power of incurring expenses, as the council determines<sup>4</sup>.

1 As to the allotments authorities see PARA 654. The Small Holdings and Allotments Act 1908 s 29(1) refers to 'the council of a borough, urban district, or parish' but this should be construed as a reference to the councils referred to in PARA 654: see PARA 520 notes 1-5.

2 Small Holdings and Allotments Act 1908 s 29(1). As to the meaning of 'allotment' see PARA 510. As to the acquisition of land for allotments see PARA 521.

3 Small Holdings and Allotments Act 1908 s 29(1) (amended by the Local Government Finance Act 1992 Sch 13 para 5). As to liability for council tax see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq.

4 See the Small Holdings and Allotments Act 1908 s 29(2).

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (3) ALLOTMENTS AUTHORITIES/657. Promotion and assistance of allotments societies.

### **657. Promotion and assistance of allotments societies.**



Allotments authorities<sup>1</sup> may promote the formation or extension of allotments societies<sup>2</sup>, may assist such societies financially by making grants or advances, or by guaranteeing advances, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the authority thinks fit<sup>3</sup>. For this purpose authorities may borrow money<sup>4</sup> and the Public Works Loan Commissioners may lend it to them<sup>5</sup>. Those authorities may also let to a society accommodation for the sale or storage of goods<sup>6</sup>, and may employ as their agents any other society having as one of its objects the promotion of co-operation in connection with the cultivation of allotments<sup>7</sup>.

1 As to the allotments authorities see PARA 654. The Small Holdings and Allotments Act 1908 s 49(1), (2) refers to 'a county or borough or urban district council' but this should be construed as a reference to the authorities referred to in PARA 654: see PARA 520 notes 1-5.

2 Small Holdings and Allotments Act 1908 s 49(1) (amended by the Land Settlement (Facilities) Act 1919 Sch 2). 'Allotments societies' are societies on a co-operative basis having for their object, or one of their objects, the provision or profitable working of allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking, insurance or otherwise: Small Holdings and Allotments Act 1908 s 49(1). 'Society' includes any body of persons, whether incorporated or unincorporated: Agricultural Land (Utilisation) Act 1931 s 20(1). As to the distribution of the proceeds of sale of land owned by an allotments society see *Re St Andrews' Allotment Association's Trusts, Sarjeant v Probert* [1969] 1 All ER 147, [1969] 1 WLR 229.

3 Small Holdings and Allotments Act 1908 s 49(2) (amended by the Land Settlement (Facilities) Act 1919 Sch 2; and the Local Government, Planning and Land Act 1980 Sch 5 para 1). The consent of the Secretary of State or the Welsh Ministers is required for the exercise by a county or county borough council of its powers to incur expenditure under the Small Holdings and Allotments Act 1908 s 49: Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(7). As to the Secretary of State and the Welsh Ministers see PARA 643.

4 See the Small Holdings and Allotments Act 1908 ss 52(1), 53(4); and PARA 587. The exercise of an authority's powers to determine the period within which any money borrowed by the authority is to be repaid is subject to the consent of the Secretary of State or the Welsh Ministers: see the Small Holdings and Allotments Regulations 1919, SI 1919/1197, reg 1(1)(6).

5 See the National Loans Act 1968 s 3(11), Sch 4 para 1; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1384 et seq.

6 Small Holdings and Allotments Act 1908 s 49(2) (amended by the Small Holdings and Allotments Act 1926 Sch 1).

7 Small Holdings and Allotments Act 1908 s 49(1), (4) (s 49(4) amended by the Statute Law (Repeals) Act 1993). With Treasury consent the Secretary of State and the Welsh Ministers may make grants to any other society out of money provided by Parliament: Small Holdings and Allotments Act 1908 s 49(4) (as so amended). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (3) ALLOTMENTS AUTHORITIES/658. Sales or lettings by allotments authorities to co-operative societies.

### **658. Sales or lettings by allotments authorities to co-operative societies.**

Allotments authorities<sup>1</sup> may let one or more allotments<sup>2</sup> to persons working on a co-operative system, and may, with the consent of the Secretary of State or the Welsh Ministers<sup>3</sup>, sell one or more allotments to any association formed for the purposes of creating or promoting the creation of allotments<sup>4</sup>.

1 As to the allotments authorities see PARA 654. The Small Holdings and Allotments Act 1908 s 27(6) refers only to 'a council' but should be construed as referring to the authorities empowered to sell or let land for allotments: see PARAS 654, 520 notes 1-5.

2 As to the meaning of 'allotment' see PARA 510.

3 As to the Secretary of State and the Welsh Ministers see PARA 643.

4 Small Holdings and Allotments Act 1908 s 27(6) (amended by the Land Settlement (Facilities) Act 1919 Sch 2). As to allotment societies generally see PARA 657. As to letting land to an association see also the Allotments Act 1922 s 15; and PARA 491. As to consent to lettings and sales see the Small Holdings and Allotments Regulations 1919, SR & O 1919/1197, reg 1(1)(1), (3).

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/(i) Establishment and Functions/659. Purposes and functions of Rural Development Boards.

## **(4) RURAL DEVELOPMENT BOARDS**

### **(i) Establishment and Functions**

#### **659. Purposes and functions of Rural Development Boards.**

In areas of hills and uplands where special problems of development and special needs exist, the Secretary of State and the Welsh Ministers<sup>1</sup> are empowered to establish<sup>2</sup> Rural Development Boards<sup>3</sup>. These boards are subject to the directions<sup>4</sup> of the Secretary of State and the Welsh Ministers, and must submit annual reports and accounts<sup>5</sup>. The special problems and needs include special difficulties in the formation of commercial agricultural units<sup>6</sup>, the need for an overall programme for guidance in making decisions as to the complementary use of land for agriculture<sup>7</sup> and forestry<sup>8</sup>, the need for improved public services, and the need for preserving and taking full advantage of amenities<sup>9</sup> and scenery<sup>10</sup>.

The functions of a board are to keep under review all means of meeting such problems and needs, and to draw up in consultation with local authorities and other bodies, and take measures to implement, a programme to meet these problems and needs<sup>11</sup>; a board and the Forestry Commission<sup>12</sup> must consult together and act in concert<sup>13</sup>. Any expenditure involved in implementing such a programme is subject to the approval of the Secretary of State or the Welsh Ministers<sup>14</sup>. Subject to the approval of the Secretary of State or the Welsh Ministers and the Treasury<sup>15</sup>, a board may make grants or loans<sup>16</sup> towards the undertaking of measures to implement any such programme<sup>17</sup>. On making a grant or loan a board may impose such conditions as it thinks fit<sup>18</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 As to the procedure for establishing a board see PARA 660. The provisions of the Agriculture Act 1967 Pt III (ss 41-57) controlling afforestation and sales of land are, as respects the area of a Rural Development Board, a local land charge: s 45(6) (substituted by the Local Land Charges Act 1975 Sch 1).

3 See the Agriculture Act 1967 s 45(1).

4 See the Agriculture Act 1967 s 54.

5 See the Agriculture Act 1967 s 53.

6 As to the meaning of 'agricultural unit' see PARA 324 note 7.

7 As to the meaning of 'agriculture' see PARA 324.

8 Such overall programme is one having regard, among other things, to the special economic considerations and long term nature of forestry: Agriculture Act 1967 s 45(3).

- 9 For examples of amenities to be considered see the Agriculture Act 1967 s 45(4).
- 10 Agriculture Act 1967 s 45(2).
- 11 See the Agriculture Act 1967 s 46(1).
- 12 The Forestry Commission is constituted by the Forestry Act 1967 ss 1, 2: as to the Commission and the Forestry Commissioners generally see **FORESTRY** vol 52 (2009) PARA 34 et seq.
- 13 Agriculture Act 1967 s 46(3). Any disputes between them are determined by the Secretary of State or the Welsh Ministers: s 46(3).
- 14 See the Agriculture Act 1967 s 46(2).
- 15 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 16 Or payments partly by way of grant and partly by way of loan: see the Agriculture Act 1967 s 47(1).
- 17 Agriculture Act 1967 s 47(1). For particular objects of financial assistance see s 47(1)(a)-(c). As to offences see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1344.
- 18 Agriculture Act 1967 s 47(2).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/(i) Establishment and Functions/660. Establishment and dissolution of Rural Development Boards.

### 660. Establishment and dissolution of Rural Development Boards.

Rural Development Boards are established by order of the Secretary of State or the Welsh Ministers<sup>1</sup>, fixing the date of establishment and the boundaries of the board's area<sup>2</sup>. Notice of the proposal to establish a board must be given in local newspapers and a period of at least 28 days allowed for objections<sup>3</sup>. Objectors may propose on a variety of grounds that the area of the board be either increased or decreased<sup>4</sup>. Objections, unless withdrawn, must be dealt with either through a public local inquiry or a hearing by a person appointed by the Secretary of State or the Welsh Ministers for the purpose<sup>5</sup>. The proposals may be modified after objections have been considered and fresh opportunity must be given for objections to the modified proposals unless the Secretary of State is or the Welsh Ministers are satisfied that all interested persons have already had a sufficient opportunity<sup>6</sup>.

Boards may be dissolved, or their areas varied, by order of the Secretary of State or the Welsh Ministers<sup>7</sup>; in the case of variation, the procedure described above must again be followed<sup>8</sup>.

1 As to the Secretary of State and the Welsh Ministers see PARA 643.

2 See the Agriculture Act 1967 Sch 5 Pt I para 1. The order must specify the board's area by reference to a map: Sch 5 Pt I para 1(2). For provisions as to the way in which the area is to be delineated see Sch 5 Pt I para 1(3), (4). When made, the order must be published in local newspapers and is open to inspection, with the map:

Sch 5 Pt I para 5. Provisions as to the setting aside of orders by the High Court under the Acquisition of Land Act 1981 Pt IV (ss 23-27) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 612, 614) apply to such an order: see the Agriculture Act 1967 Sch 5 Pt I para 6A(1) (Sch 5 Pt I para 6A added by the Acquisition of Land Act 1981 Sch 4 para 15(3)).

Orders establishing or dissolving Rural Development Boards, being local in nature, are not recorded in this work.

3 See the Agriculture Act 1967 Sch 5 Pt I para 2. The Secretary of State and the Welsh Ministers must first consult with local authorities and interested public bodies: see Sch 5 Pt I para 2(1).

4 See the Agriculture Act 1967 Sch 5 Pt I para 3.

5 See the Agriculture Act 1967 Sch 5 Pt I para 4(2). Provisions as to evidence and costs under the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply to such a public local inquiry or hearing: Agriculture Act 1967 Sch 5 Pt I para 6A(3) (as added: see note 2).

6 See the Agriculture Act 1967 Sch 5 Pt I para 4(4), (5).

7 See the Agriculture Act 1967 Sch 5 Pt I para 6.

8 Agriculture Act 1967 Sch 5 Pt I para 6(2). Dissolution orders may contain consequential and transitional provisions: Sch 5 Pt I para 6(3). Orders establishing or dissolving Rural Development Boards, being local in nature, are not recorded in this work.

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

### 660 Establishment and dissolution of Rural Development Boards

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/(i) Establishment and Functions/661. Constitution and procedure of Rural Development Boards.

### 661. Constitution and procedure of Rural Development Boards.

A Rural Development Board is a body corporate with capacity to do all things incidental or conducive to the performance of its functions, and to borrow money with the consent of the Secretary of State or the Welsh Ministers<sup>1</sup>. It consists of not fewer than six nor more than twelve members appointed by the Secretary of State or the Welsh Ministers, of whom one is appointed chairman and one deputy chairman<sup>2</sup>. Provisions are made for removal and resignation of members<sup>3</sup>, validity of proceedings notwithstanding vacancies or defective appointments<sup>4</sup>, quorum and voting<sup>5</sup>, and appointment and remuneration of officers and servants<sup>6</sup>. A member is under a duty to disclose any pecuniary interest in contracts or other matters which are under discussion at meetings, and is precluded from voting thereon, though he may be permitted at the chairman's discretion to take part in the discussion<sup>7</sup>.

1 See the Agriculture Act 1967 Sch 5 Pt II paras 2, 3. As to the Secretary of State and the Welsh Ministers see PARA 643.

2 Agriculture Act 1967 Sch 5 Pt II para 1(1), (2). As to the remuneration of members, including pensions and compensation for loss of office, see Sch 5 Pt II para 1(3).

3 Agriculture Act 1967 Sch 5 Pt II paras 5, 6.

4 Agriculture Act 1967 Sch 5 Pt II para 4.

5 Agriculture Act 1967 Sch 5 Pt II para 8.

6 Agriculture Act 1967 Sch 5 Pt II para 9.

7 Agriculture Act 1967 Sch 5 Pt II para 7. Interests which a member has as an inhabitant of the area, or as an owner of land, or as an applicant or prospective applicant for any consent, licence, grant or loan do not disqualify the member from voting, provided that those interests are interests which he has in common with all other inhabitants, owners, applicants or prospective applicants or any class thereof: Sch 5 Pt II para 7(1) proviso.

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (ii) Acquisition of Land, Control of Transfers and Related Powers/662. Acquisition and use of land by Rural Development Boards.

## (ii) Acquisition of Land, Control of Transfers and Related Powers

### 662. Acquisition and use of land by Rural Development Boards.

In the discharge of its functions, a Rural Development Board may acquire land<sup>1</sup> by agreement, and manage, improve, farm, sell, let<sup>2</sup>, develop or build on its land, acquire farming businesses and stock, and provide equipment for its tenants engaged in agriculture or forestry<sup>3</sup>.

1 'Land' includes any estate or interest in land: Agriculture Act 1967 s 75(2).

2 A board may sell or let any land subject to any depreciatory conditions imposed in the interests of the community or for any purpose connected with the board's functions: Agriculture Act 1967 s 46(4)(b).

3 Agriculture Act 1967 s 46(4). As to the acquisition of land for the purpose of effecting amalgamations see PARA 668.

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (ii) Acquisition of Land, Control of Transfers and Related Powers/663. Control by Rural Development Boards of transfers of land.

### **663. Control by Rural Development Boards of transfers of land.**

Subject to a number of exceptions<sup>1</sup>, any transfer<sup>2</sup> of land within the area of a Rural Development Board<sup>3</sup> requires the board's written consent<sup>4</sup>. For these purposes, 'land' means agricultural land<sup>5</sup>, woodland<sup>6</sup>, unenclosed mountain, hill or heath land, or common or waste land<sup>7</sup>. An application for consent must be in such form as the board directs; and the board may refuse or grant the consent applied for<sup>8</sup>. The board may not refuse consent unless it is satisfied that the land, if acquired by it:

- 309 (1) can suitably be used or disposed of by it to effect amalgamations<sup>9</sup> or to promote the co-ordination of the use of the land for forestry and agriculture<sup>10</sup>;
- 310 (2) is land which in the opinion of the board and the Forestry Commission<sup>11</sup> ought to be planted by the Commission<sup>12</sup>; or
- 311 (3) can suitably be used or disposed of by it for some purpose ancillary to the use of other land for agriculture or forestry<sup>13</sup>,

or unless it is satisfied that refusal of its consent will prevent the creation of an uncommercial unit of agricultural land<sup>14</sup>.

Within two months of receipt of an application for consent, the board must notify the applicant of its decision; unless consent is granted, the notice must give the reasons for the decision<sup>15</sup>. If the board refuses consent, the applicant may appeal to the Secretary of State or the Welsh Ministers<sup>16</sup> within two months of receipt of the notice withholding consent<sup>17</sup>.

1 See PARA 664.

2 'Transfer of land' includes the grant of a lease for a term exceeding ten years, and assignment of a lease with an unexpired term exceeding ten years: Agriculture Act 1967 s 49(13).

3 As to the establishment and functions of Rural Development Boards see PARAS 659-661.

4 Agriculture Act 1967 s 49(1).

5 As to the meaning of 'agricultural land' see PARA 324.

6 'Woodland' includes all land used primarily for the growing of trees: Agriculture Act 1967 s 57(1).

7 Agriculture Act 1967 s 50(1).

8 Agriculture Act 1967 s 49(2). As to service of the application see s 49(10).

9 Agriculture Act 1967 s 49(3)(a). As to amalgamations of agricultural land and reshaping agricultural units see PARA 668.

10 See the Agriculture Act 1967 s 49(3)(b).

11 The Forestry Commission is constituted by the Forestry Act 1967 ss 1, 2: as to the Commission and the Forestry Commissioners generally see **FORESTRY** vol 52 (2009) PARA 34 et seq.

12 See the Agriculture Act 1967 s 49(3)(c).

13 See the Agriculture Act 1967 s 49(3)(d).

14 See the Agriculture Act 1967 s 49(3).

15 Agriculture Act 1967 s 49(4). In the event of non-compliance, the applicant may give the board 14 days' notice to remedy its default and upon expiry of that period, if the board has not notified him of its decision, it will be obliged to give its consent: s 49(10), (11).

16 As to the Secretary of State and the Welsh Ministers see PARA 643.

17 See the Agriculture Act 1967 s 49(5). The ground of appeal is 'that the application for consent ought to be granted', which would seem to allow any question of fact or law to be raised: see s 49(5). The Secretary of State or the Welsh Ministers must afford the appellant and the board, if either so desires, an opportunity of appearing before and being heard by a person appointed for the purpose: s 49(5). A further appeal lies to the High Court and the Court of Appeal on a question of law or a case stated: s 49(5) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 15(1)). This provision applies the provisions of the Town and Country Planning Act 1990 s 289 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 648, 1295) as to appeals against enforcement notices.

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (ii) Acquisition of Land, Control of Transfers and Related Powers/664. Exemptions from control of Rural Development Boards.

### 664. Exemptions from control of Rural Development Boards.

The consent of a Rural Development Board<sup>1</sup> is not required in the following cases: transfers to or from a local authority<sup>2</sup>, the Environment Agency<sup>3</sup>, a national park authority<sup>4</sup>, the National Trust<sup>5</sup>, and certain other specified bodies<sup>6</sup>; transfers by an individual to a member of his family<sup>7</sup> or to the trustees of a settlement exclusively for the benefit of members of his family<sup>8</sup>; transfers effected in pursuance of a contract of sale concluded before the land came to be in the area of a board<sup>9</sup>; transfers giving effect to the devolution of the land on death or bankruptcy, or under the terms of a settlement<sup>10</sup>; and transfers by a mortgagee or chargee under a mortgage or charge created before the land came into the board's area<sup>11</sup>.

1 As to the requirement for consent see PARA 663. As to the establishment and functions of Rural Development Boards see PARAS 659-661.

2 In the Agriculture Act 1967 'local authority' means (in England) the council of a county or a London borough, the Common Council of the City of London and a district council, and (in Wales) the council of a county or county borough: s 75(1) (amended by the Local Government Act 1972 Sch 30 and the Local Government (Wales) Act 1994 Sch 16 para 30, Sch 18).

- 3 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.
- 4 As to the national park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 5 As to the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq.
- 6 Agriculture Act 1967 s 50(3) (amended by the Agriculture (Miscellaneous Provisions) Act 1968 s 47; the Water Act 1989 Sch 25 para 34; the Planning (Consequential Provisions) Act 1990 Sch 2 para 15(2); and the Environment Act 1995 Sch 10 para 6, Sch 24). The other bodies are: statutory undertakers within the meaning of the Town and Country Planning Act 1990 ss 262, 336(1) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009 et seq), corporations carrying on nationalised industries, the Natural Environment Research Council (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 970), water undertakers (see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq), sewerage undertakers (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq) and internal drainage boards (see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq): see the Agriculture Act 1967 s 50(3) (as so amended).
- 7 'Family' means spouse, lineal descendant or ancestor, brother and sister and their children; and an adopted child is treated as a child, and a relationship of the half blood as of the whole blood: see the Agriculture Act 1967 s 50(4).
- 8 See the Agriculture Act 1967 s 50(4).
- 9 Or up to three months after the establishment of the board, if the establishing order so provides: Agriculture Act 1967 s 50(5).
- 10 See the Agriculture Act 1967 s 50(6)(a).
- 11 See the Agriculture Act 1967 s 50(6)(b).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

### 664 Exemptions from control of Rural Development Boards

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (ii) Acquisition of Land, Control of Transfers and Related Powers/665. Acquisition by Rural Development Board where its consent refused.

### 665. Acquisition by Rural Development Board where its consent refused.

Within three months of the date of receipt of a notice withholding consent to the transfer of land<sup>1</sup>, the applicant may serve on a Rural Development Board<sup>2</sup> a notice requiring the board to purchase the estate or interest proposed to be transferred<sup>3</sup>. If the applicant's estate or interest in the land is greater than that which is proposed to be transferred, the board may, by notice given within two months of receipt of the purchase notice, require that the purchase notice



apply to all the estate or interest of the applicant in the land<sup>4</sup>. Upon service of a purchase notice, a board is authorised to acquire compulsorily the estate or interest, and is deemed to have served a notice to treat<sup>5</sup>. The applicant may withdraw the purchase notice within six weeks from the final determination of compensation by the Lands Tribunal<sup>6</sup>, or, if there has been no final determination, at any time before the acceptance in writing by the applicant of an unconditional offer<sup>7</sup> by the board<sup>8</sup>.

1 As to such notice see PARA 663. In the case where an appeal has been brought (see PARA 663 text and notes 16-17) and is unsuccessful, the period of three months runs from the final determination of the appeal: Agriculture Act 1967 s 49(6).

2 As to the establishment and functions of Rural Development Boards see PARAS 659-661.

3 Agriculture Act 1967 s 49(6). Where the proposed transfer is by way of the grant of a lease for a term exceeding ten years, 'estate or interest' means the proposed transferor's estate and interest both in the reversion and the lease: s 49(13).

The Secretary of State or the Welsh Ministers may give directions for the inclusion of other land in a purchase notice, on the ground that the applicant wishes to dispose of land falling partly outside the board's jurisdiction, and would be substantially prejudiced if he were unable to dispose of all the land in one transaction: see s 50(2). As to the Secretary of State and the Welsh Ministers see PARA 643.

4 See the Agriculture Act 1967 s 49(9). See also note 3.

5 See the Agriculture Act 1967 s 49(7). This provision applies the provisions as to compulsory purchase orders (see the Compulsory Purchase Act 1965 Pt I (ss 1-32); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 513 et seq), excluding the power of entry (see s 11(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 645), and excluding the right to withdraw the notice to treat (see the Land Compensation Act 1961 s 31; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 636).

6 As to determination of compensation by the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 753 et seq. In the assessment of compensation, no account is to be taken of any depreciation of the value of the relevant interest attributable to the provisions of the Agriculture Act 1967 ss 49, 50: s 50(8).

7 Ie an offer in writing of a sum of compensation payable pursuant to the purchase notice: see the Agriculture Act 1967 s 49(8).

8 See the Agriculture Act 1967 s 49(8).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

### 665 Acquisition by Rural Development Board where its consent refused

TEXT AND NOTES 6-8--References to the Lands Tribunal are now to the Upper Tribunal: Agriculture Act 1967 s 49(8) (amended by SI 2009/1307). See also Agriculture Act 1967 s 49(8A) (added by SI 2009/1307).

Land, Control of Transfers and Related Powers/666. Contravention of control giving rise to compulsory purchase.

### **666. Contravention of control giving rise to compulsory purchase.**

Failure to obtain a Rural Development Board's consent<sup>1</sup> to any transaction does not invalidate the transaction<sup>2</sup>, but the board has power to acquire by a compulsory purchase order<sup>3</sup> all the estate and interest of the transferor in land transferred in contravention of the control provisions<sup>4</sup>.

1 As to the requirement of such consent see PARAS 663-664. As to the establishment and functions of Rural Development Boards see PARAS 659-661.

2 See the Agriculture Act 1967 s 50(9).

3 In an order to which the Compulsory Purchase Act 1965 Pt I (ss 1-32) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 513 et seq) applies: see the Agriculture Act 1967 ss 49(7), 50(7). The Acquisition of Land Act 1981 Pt IV (ss 23-27) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 612, 614) applies to any notice to treat served in pursuance of the Agriculture Act 1967 s 50(7): see s 50(7) (amended by the Acquisition of Land Act 1981 Sch 4 PARA 15(2)). As to compulsory purchase orders and notices to treat see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

4 See the Agriculture Act 1967 s 50(7). Notice to treat must be served within six years from the date of transfer: s 50(7).

## **UPDATE**

### **659-673 Rural Development Boards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (ii) Acquisition of Land, Control of Transfers and Related Powers/667. Other powers of Rural Development Boards.

### **667. Other powers of Rural Development Boards.**

A Rural Development Board may carry out or commission the carrying out of inquiries, investigations and researches in connection with its functions<sup>1</sup>. It may in writing authorise a person to enter<sup>2</sup> on any land in the board's area<sup>3</sup> to determine whether, and in what way, the functions of the board should be exercised<sup>4</sup>; on leaving the land such person must leave it as effectively secured against trespassers as he found it<sup>5</sup>. A board may by notice require a landowner or occupier in its area to furnish such information as it may reasonably require to discharge its functions<sup>6</sup>; any information so obtained is, with certain exceptions, confidential<sup>7</sup>. No person may plant trees on land in a board's area without a licence granted by that board, but no licence is required, inter alia, for planting by the Forestry Commission<sup>8</sup>.

1 See the Agriculture Act 1967 s 46(4)(f). As to the establishment and functions of Rural Development Boards see PARAS 659-661.

2 Entry may be at any reasonable time but may not be demanded as of right without 48 hours' notice, or seven days in the case of residential property; and documentary authority must be produced if required: Agriculture Act 1967 s 55(1).

3 As to a board's area see PARA 660.

4 See the Agriculture Act 1967 s 55(1). Wilful obstruction of a person exercising this power is punishable on summary conviction by a fine not exceeding level 1 on the standard scale: s 55(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 641 note 5.

5 See the Agriculture Act 1967 s 55(2).

6 See the Agriculture Act 1967 s 55(3). Failure without reasonable cause to furnish the required information within three months is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 55(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

7 Disclosure may be made with consent or to a member, officer, servant or agent of the board, the Secretary of State or the Welsh Ministers or an officer, servant or agent of the Secretary of State or the Welsh Ministers; or for the purpose of proceedings under the Agriculture Act 1967 Pt III (ss 41-57) or any criminal proceedings: s 55(4). Unauthorised disclosure is punishable on summary conviction by a fine not exceeding the prescribed sum, imprisonment not exceeding three months, or both, or on conviction on indictment by an unlimited fine, imprisonment not exceeding two years, or both: s 55(4) (amended by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 641 note 8.

8 See the Agriculture Act 1967 s 52; and **FORESTRY** vol 52 (2009) PARA 56. The Forestry Commission is constituted by the Forestry Act 1967 ss 1, 22: as to the Commission and the Forestry Commissioners generally see **FORESTRY** vol 52 (2009) PARA 34 et seq.

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (iii) Promotion of Amalgamations and Boundary Adjustments/668. Exercise of powers of acquisition and disposal by Rural Development Boards.

### (iii) Promotion of Amalgamations and Boundary Adjustments

#### 668. Exercise of powers of acquisition and disposal by Rural Development Boards.

A Rural Development Board<sup>1</sup> may exercise its powers to acquire, hold and dispose of land<sup>2</sup> in such a way as to effect amalgamations of agricultural land<sup>3</sup> and to reshape agricultural units<sup>4</sup>. A board may enter into transactions involving loss, including amalgamating holdings of land in a way which renders less valuable, or useless, any buildings or equipment on any of the land, allowing the occupier of an uncommercial unit<sup>5</sup> to retain occupation of a dwelling house on the land when the remainder of the unit is acquired by the board for the purposes of amalgamation, and selling land subject to depreciatory conditions ensuring continued single ownership and occupation for agricultural purposes<sup>6</sup>. A deed by which a board conveys land may apply statutory conditions<sup>7</sup> to any of that land, and to any other land, but only if all the persons who will have an estate or interest in the land to which such conditions are applied

have executed the deed<sup>8</sup>. Certain special provisions apply to land in respect of which these powers have been exercised<sup>9</sup>.

1 As to the establishment and functions of Rural Development Boards see PARAS 659-661.

2 As to those powers see PARA 662.

3 As to the meaning of 'agricultural land' see PARA 324. As to 'amalgamation' see the Agriculture Act 1967 s 26(1); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338 (definition applied by the Agriculture Act 1967 s 57(1)).

4 Agriculture Act 1967 s 48(1). As to the meaning of 'agricultural unit' see PARA 324 note 7.

5 As to the meanings of 'commercial unit' and 'uncommercial unit' see the Agriculture Act 1967 s 26(1); and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338 (definition applied by the Agriculture Act 1967 s 57(1)).

6 Agriculture Act 1967 s 48(1).

7 le the conditions in the Agriculture Act 1967 ss 26, 28, 29, 48, Sch 3 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1338 et seq).

8 See the Agriculture Act 1967 s 48(2) (amended by the Agriculture Act 1970 s 33(2)). In the case of land comprised in a settlement or subject to a trust of land, the person having the powers of a tenant for life and the trustees for land may execute the deed on behalf of all other persons who are or may become entitled to benefit under the settlement or trust, as well as on his own behalf: Agriculture Act 1970 s 33(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 11).

9 The provisions of the Agriculture Act 1967 s 27 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1340) as to grants to outgoers are applicable: see s 27(1)(b). The provisions of the Agricultural Holdings Act 1986 Sch 3 Pt I Case H (see PARA 384) relating to notices to quit are also applicable: see the Agriculture Act 1967 s 48(4) (substituted by the Agricultural Holdings Act 1986 Sch 14 para 41). If the board certifies that a tenancy is granted by it in connection with transactions for amalgamations and the reshaping of agricultural units, the exclusion of the application of the Rent Act 1977 under s 14 (see **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 884) applies as if the board were a local authority: Agriculture Act 1967 s 48(5).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

### 668 Exercise of powers of acquisition and disposal by Rural Development Boards

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/(4) RURAL DEVELOPMENT BOARDS/ (iii) Promotion of Amalgamations and Boundary Adjustments/669. Schemes by Rural Development Boards for co-ordinated amalgamation and reshaping.

## 669. Schemes by Rural Development Boards for co-ordinated amalgamation and reshaping.

If it appears to a Rural Development Board that in any part of its area<sup>1</sup> there is a need, for the benefit of the community and for the mutual advantage of those owning and occupying the agricultural land<sup>2</sup>, of a co-ordinated scheme of amalgamations, reshaping of agricultural units<sup>3</sup> and afforestation<sup>4</sup>, to be effected by transfers and exchanges of land and grants, surrenders, renunciations and variations of tenancies, the board may proceed to make such a scheme<sup>5</sup>. The scheme must be based on a comprehensive plan for the uses of the land, including afforestation<sup>6</sup>. The scheme must be published and made available for inspection, and the board must invite submissions to it on any aspect of the scheme<sup>7</sup>. The board is required to submit the scheme, and the submissions made thereon, to the Secretary of State or the Welsh Ministers<sup>8</sup>, who may direct a public inquiry to be held<sup>9</sup>. After considering the reports of the board and the public inquiry, if any, the Secretary of State or the Welsh Ministers must either reject or approve the scheme, with or without modifications<sup>10</sup>; notice of approval must be published<sup>11</sup>. If the scheme is approved, the Secretary of State or the Welsh Ministers will direct the board to enter into negotiations to implement the scheme, and the board must endeavour to arrive at proposals for the scheme which all concerned will be willing to implement<sup>12</sup>. If the Secretary of State is, or the Welsh Ministers are, satisfied that the board has entered into binding agreements to carry out the transactions necessary to implement the scheme except with respect to an area of outstanding land small in comparison with the total and that the terms of the scheme in relation to the acquisition of the outstanding land are equitable, he or they may authorise the board to acquire the outstanding land compulsorily<sup>13</sup>.

1 As to the establishment and functions of Rural Development Boards see PARAS 659-661. As to a board's area see PARA 660.

2 As to the meaning of 'agricultural land' see PARA 324.

3 As to the meaning of 'agricultural unit' see PARA 324 note 7.

4 As to the board's functions in connection with afforestation see the Agriculture Act 1967 s 52; and **FORESTRY** vol 52 (2009) PARA 56.

5 See the Agriculture Act 1967 s 51(1).

6 Agriculture Act 1967 s 51(2)(a).

7 Agriculture Act 1967 s 51(2)(b). The means of publication are at the discretion of the board: s 51(2)(b).

8 As to the Secretary of State and the Welsh Ministers see PARA 643.

9 See the Agriculture Act 1967 s 51(3).

10 Agriculture Act 1967 s 51(4).

11 In such manner as appears appropriate to the Secretary of State or the Welsh Ministers: see the Agriculture Act 1967 s 51(5).

12 See the Agriculture Act 1967 s 51(5), (6).

13 See the Agriculture Act 1967 s 51(7) (amended by SI 1978/244). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) applies as if the board were a local authority: see the Agriculture Act 1967 s 51(7) (amended by the Acquisition of Land Act 1981 Sch 4 para 1, Sch 6 Pt I).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (5) AGRICULTURAL LAND TRIBUNALS/670. Establishment of agricultural land tribunals.

## **(5) AGRICULTURAL LAND TRIBUNALS**

### **670. Establishment of agricultural land tribunals.**

An agricultural land tribunal has been established for each of eight areas<sup>1</sup>, together comprising the whole of England and Wales, constituted for that purpose by order of the Lord Chancellor<sup>2</sup>, and each is charged with the duty of hearing and determining references and applications made under any enactment<sup>3</sup>. At the date at which this volume states the law the operation of the agricultural land tribunals is governed by relevant provisions of the Agriculture Act 1947 and related subordinate legislation<sup>4</sup>; however the Lord Chancellor may by order provide for any function of an agricultural land tribunal to be transferred to the First-Tier or Upper Tribunals to be established under the Tribunals, Courts and Enforcement Act 2007<sup>5</sup>.

Applications to and proceedings of agricultural land tribunals are regulated by rules<sup>6</sup>. The tribunals are under the general supervision of the Administrative Justice and Tribunals Council<sup>7</sup>.

1 The Northern; Yorkshire and Humberside; Eastern; Midlands; Western; South Western; South Eastern; and Welsh; Agricultural Land Tribunals (Areas) Order 1982, SI 1982/97, art 2(2), (3), Sch 1. Where land lies partly in the area of one tribunal and partly in that of another the Lord Chancellor may direct that the whole of the land be deemed to be comprised in such of those areas as may be specified: Agriculture Act 1947 s 75 (amended by virtue of the Agriculture Act 1958 Sch 1 para 4; and by the Agriculture (Miscellaneous Provisions) Act 1963 Schedule Pt I; and the Agriculture (Miscellaneous Provisions) Act 1972 Sch 6).

2 Agriculture Act 1947 s 73(1) (amended by the Agriculture Act 1958 Sch 1 para 3; and the Constitutional Reform Act 2005 Sch 4 paras 29, 30); Agricultural Land Tribunals (Areas) Order 1982, SI 1982/97, art 2(1). The Lord Chancellor must consult the chairman of the agricultural land tribunals before making such an order: Agriculture Act 1947 s 73(1) (as so amended).

3 Agriculture Act 1947 s 73(1) (as amended: see note 2).

4 See PARAS 671-673.

5 See the Tribunals, Courts and Enforcement Act 2007 s 30, Sch 6 Pt 4; and **ADMINISTRATIVE LAW**. At the date at which this volume states the law no such order had been made.

6 See the Agriculture Act 1947 s 73(3), (4) (amended by the Agriculture Act 1958 Sch 1 para 3, Sch 3 Pt I; and by the Agricultural Holdings Act 1986 Sch 14 para 18); and the Agricultural Land Tribunals (Rules) Order 2007, SI 2007/3105.

7 See the Tribunals, Courts and Enforcement Act 2007 ss 44, 45; the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007, SI 2007/2951; the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, SI 2007/2876; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) para 57A.

## **UPDATE**

### **659-673 Rural Development Boards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (5) AGRICULTURAL LAND TRIBUNALS/671. Constitution of agricultural land tribunals.

### **671. Constitution of agricultural land tribunals.**

The Lord Chancellor appoints the chairman of each agricultural land tribunal<sup>1</sup> and draws up and from time to time revises for each tribunal a panel of deputy chairmen who are similarly qualified<sup>2</sup>, and two further panels, respectively of persons representing the interests of farmers and of persons representing the interests of owners of agricultural land<sup>3</sup>.

For each hearing by a tribunal the members are:

- 312 (1) the chairman or a person nominated by the chairman either from the panel of deputy chairmen, whether for that tribunal or for any other tribunal, or from among the chairmen of other tribunals<sup>4</sup>; and
- 313 (2) one person nominated by the chairman from each of the other two panels mentioned above or from a corresponding panel for any other tribunal<sup>5</sup>.

The chairman may nominate for the purposes of assisting a tribunal at any hearing two assessors selected by him from a panel nominated by the President of the Royal Institution of Chartered Surveyors<sup>6</sup>. If the chairman is prevented by sickness or any other reason from making nominations of members of a tribunal or of assessors or from otherwise discharging his duties, those duties may be discharged by a person appointed from the panel of deputy chairmen for that tribunal by the chairman or, if he is unable to make the appointment, by the Lord Chief Justice, after consulting the Lord Chancellor<sup>7</sup>.

A tribunal may sit in two or more divisions, each of which is deemed to be the tribunal in relation to the hearing of applications and references by it<sup>8</sup>.

1 Agriculture Act 1947 Sch 9 para 13(1) (Sch 9 para 13 substituted by the Agriculture Act 1958 Sch 1 para 5; Agriculture Act 1947 Sch 9 para 13(1) amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 6; and prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 10 Pt 1 para 4). As to the establishment of agricultural land tribunals see PARA 670. Until a day to be appointed the person appointed chairman must have a seven year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 742); as from that day he must be a person who satisfies the judicial-appointment eligibility condition on a five-year basis: Agriculture Act 1947 Sch 9 para 13(1) (as so substituted, amended and prospectively amended). At the date at which this volume states the law no day had been appointed for these purposes. As to the judicial-appointment eligibility condition see the Tribunals, Courts and Enforcement Act 2007 ss 50-52.

As to term of office, re-appointment, resignation and revocation of appointment of the chairman see the Agriculture Act 1947 Sch 9 para 13(2), (2A), (3), (4) (Sch 9 para 13 as so substituted; Sch 9 para 13(2) amended, and Sch 9 para 13(2A) added, by the Judicial Pensions and Retirement Act 1993 Sch 6 para 46; Agriculture Act 1947 Sch 9 para 13(4) amended by the Constitutional Reform Act 2005 Sch 4 para 33). As to the disqualification of the chairman and members of a panel of deputy chairmen for membership of the House of Commons see the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt III; and **PARLIAMENT** vol 78 (2010) PARA 908.

2 Agriculture Act 1947 Sch 9 para 14 (substituted by the Agriculture Act 1958 Sch 1 para 5; and amended by the Judicial Pensions and Retirement Act 1993 Sch 6 para 46). As to disqualification for membership of the House of Commons see note 1.

3 Agriculture Act 1947 Sch 9 para 15(1) (Sch 9 para 15 substituted by the Agriculture Act 1958 Sch 1 para 5). As to the meaning of 'agricultural land' see PARA 324. As to the persons to be placed on these two panels see the Agriculture Act 1947 Sch 9 para 15(2), (3) (as so substituted); and as to provision for the retirement of panel members see Sch 9 para 15(1A) (Sch 9 para 15 as so substituted; and Sch 9 para 15(1A) added by the Judicial Pensions and Retirement Act 1993 Sch 6 para 46).

4 Agriculture Act 1947 Sch 9 para 16(1)(a) (Sch 9 para 16 substituted by the Agriculture Act 1958 Sch 1 para 5).

5 Agriculture Act 1947 Sch 9 para 16(1)(b) (as substituted: see note 4).

6 Agriculture Act 1947 Sch 9 para 16(2), (3) (as substituted: see note 4). As to the Royal Institution of Chartered Surveyors see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 71.

7 Agriculture Act 1947 Sch 9 para 16A(1) (Sch 9 para 16A added by the Agriculture Act 1958 Sch 1 para 5; and amended by the Constitutional Reform Act 2005 Sch 4 para 33). The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4) (see **COURTS**)) to exercise these functions: Agriculture Act 1947 Sch 9 para 16A(2) (as so added and amended). There are also provisions as to the amendment by order of the provisions as to nominated members of tribunals, the validity of decisions notwithstanding a defect in the appointment or disqualification of a member, the attachment to tribunals of officers and servants, remuneration and expenses of members and assessors, and proof of instruments (Sch 9 paras 17, 20, 22(2), 23, 24 (Sch 9 para 17 amended by the Agriculture Act 1958 Sch 1 para 5)). As to defective appointments see also *Woollett v Minister of Agriculture and Fisheries* [1955] 1 QB 103, [1955] 3 All ER 529, CA.

8 Agriculture Act 1947 s 73(5) (added by the Agriculture Act 1958 Sch 1 para 3).

## UPDATE

### 659-673 Rural Development Boards

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

### 671 Constitution of agricultural land tribunals

NOTE 1--Tribunals, Courts and Enforcement Act 2007 Sch 10 para 4 in force on 21 July 2008: SI 2008/1653.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (5) AGRICULTURAL LAND TRIBUNALS/672. Award of costs in proceedings before agricultural land tribunals.

### 672. Award of costs in proceedings before agricultural land tribunals.

Where it appears to an agricultural land tribunal<sup>1</sup> that any person concerned in a reference or application has acted frivolously, vexatiously or oppressively in applying for the reference or application or in connection with them, the tribunal may order him to pay to any other party either a specified sum in respect of his costs or the assessed amount of those costs, and it may do so whether or not the reference or application proceeds to a hearing<sup>2</sup>. Provision is made for the assessment in the county court of any costs so required to be assessed<sup>3</sup> and for the recovery of sums assessed to be payable<sup>4</sup>.



- 1 As to the establishment of agricultural land tribunals see PARA 670.
- 2 Agriculture (Miscellaneous Provisions) Act 1954 s 5(1) (amended by the Agriculture Act 1958 Sch 1 para 26). As to the assessment of costs see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1747, 1779 et seq.
- 3 See the Agriculture (Miscellaneous Provisions) Act 1954 s 5(2), (4).
- 4 See the Agriculture (Miscellaneous Provisions) Act 1954 s 5(3) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 para 25).

## **UPDATE**

### **659-673 Rural Development Boards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AGRICULTURAL LAND (VOLUME 1 (2008) 5TH EDITION)/4. ADMINISTRATION AND AUTHORITIES/ (5) AGRICULTURAL LAND TRIBUNALS/673. Reference of questions of law by an agricultural land tribunal to High Court.

### **673. Reference of questions of law by an agricultural land tribunal to High Court.**

Any question of law arising in the course of proceedings before an agricultural land tribunal<sup>1</sup> may, at the request of any party, be referred to the High Court for decision, either before or after the tribunal has given its decision<sup>2</sup>. If, after giving its decision, the tribunal refuses a request so to refer a question, an aggrieved party may apply to the High Court for an order directing it to do so<sup>3</sup>. Action upon the tribunal's decision is to be stayed pending the making of an order by the tribunal after the conclusion of the High Court proceedings and any proceedings arising therefrom (or after the right to take or continue any such proceedings has lapsed), and any such order must, where necessary, modify the decision in order to give effect to the decision of the High Court and, in a case relating to a notice to quit, may postpone the date at which the tenancy is to be terminated<sup>4</sup>.

- 1 As to the establishment of agricultural land tribunals see PARA 670.
- 2 Agriculture (Miscellaneous Provisions) Act 1954 s 6(1). See also the Agriculture (Miscellaneous Provisions) Act 1954 s 6(4).
- 3 Agriculture (Miscellaneous Provisions) Act 1954 s 6(2).
- 4 Agriculture (Miscellaneous Provisions) Act 1954 s 6(5). See also the Agriculture (Miscellaneous Provisions) Act 1954 s 6(6) (amended by the Agriculture Act 1958 Sch 1 para 27).

## **UPDATE**

### **659-673 Rural Development Boards**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.